

Federal Court



Cour fédérale

Date: 20240403

Docket: IMM-4725-23

Citation: 2024 FC 511

Ottawa, Ontario, April 3, 2024

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

HOANG ANH THU NGUYEN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Hoang Anh Thu Nguyen [Ms. Nguyen], seeks judicial review of the decision of the Refugee Appeal Division [RAD] dated March 15, 2023. The RAD agreed with and confirmed the decision of the Refugee Protection Division [RPD] and found that Ms. Nguyen was not a Convention Refugee pursuant to section 96 nor a person in need of protection pursuant to subsection 97(1) of *the Immigration and Refugee Protection Act* [the Act].

The RAD found that Ms. Nguyen did not have a well-founded fear of persecution based on her identity as a Roman Catholic in Viet Nam.

[2] For the reasons that follow, the Application is dismissed.

I. Background

[3] Ms. Nguyen attests that following the death of both of her parents, she suffered from stress and depression. Her aunt then introduced her to Catholicism to assist her in healing and she began attending a “house church” in January 2018.

[4] Ms. Nguyen attests that in mid-August 2019 her aunt informed her that two fellow church members had been arrested while preaching the gospel. The house church immediately suspended its services. Ms. Nguyen claims that her aunt advised her to leave Viet Nam, her aunt went into hiding, and her uncle hired a smuggler to help her leave.

[5] Ms. Nguyen arrived in Canada in February 2020 and submitted her refugee claim on July 28, 2020. She alleges that if she returns to Viet Nam she will be subject to persecution and would be unable to practice her religion freely.

[6] The RPD found that Ms. Nguyen is neither a Convention refugee nor a person in need of protection because she does not have a well-founded fear of persecution.

[7] The RPD accepted that Ms. Nguyen converted to Catholicism after the death of her parents and that she has continued to practice her faith since arriving in Canada. However, the

RPD found that Ms. Nguyen failed to establish that the authorities in Viet Nam had targeted her house church or that she had an objective fear of persecution based on her religious identity.

[8] The RPD found that Ms. Nguyen's account was not entirely credible because of inconsistencies in her Basis of Claim [BOC] and her oral testimony. The RPD concluded that contrary to Ms. Nguyen's account: there was no evidence that the house church had been demolished; there was no evidence to support her belief that authorities in Viet Nam are aware of her participation in the house church; and, there was no evidence to support her belief that the police are seeking her.

[9] The RPD found Ms. Nguyen had no objective evidence to support her beliefs or oral testimony. The RPD found that, on a balance of probabilities, the police in Viet Nam are not looking for Ms. Nguyen and she will not face persecution if she returns.

[10] The RPD relied on the National Documentation Package [NDP] for Viet Nam to assess whether Ms. Nguyen had a well-founded fear of persecution based on her identity as a Catholic. The RPD found that the NDP suggests Catholics do not face harassment based on their religion *per se* and that any harassment of religious groups is tied to their political opposition or activities (e.g., opposition to land expropriation or environmental activism). The RPD noted Ms. Nguyen testified that she had not taken part in any anti-government political activity.

[11] The RPD did not find Ms. Nguyen's testimony regarding why she practiced her religion at a house church instead of a registered Catholic church – namely, because registered churches put reverence of the government ahead of love for God – to be credible. Ms. Nguyen submitted

two letters from her aunt that stated that her house church services were disrupted, and that house churches worship the “true God” even though the government does not allow this. The RPD concluded that this was insufficient evidence to establish that registered churches are required to put the Vietnamese Communist Party ahead of God or are otherwise unable to worship freely.

[12] The RPD found, based on the country condition evidence in the NDP, that Catholics in Viet Nam are not persecuted solely for their religious beliefs, and therefore, Ms. Nguyen is not at risk of persecution because she practiced Catholicism in a house church. Given Ms. Nguyen is neither a religious leader nor a Catholic engaged in political activism, the RPD concluded she did not demonstrate a well-founded fear of persecution based on her religious identity.

[13] Ms. Nguyen appealed to the RAD.

II. The RAD Decision under review

[14] The RAD conducted an independent assessment of the evidence and agreed with the RPD’s finding that Ms. Nguyen would not be at a risk of persecution due to her religious identity if forced to return to Viet Nam, or that she would be subject to harm pursuant to subsection 97(1) of the Act.

[15] The RAD first found that Ms. Nguyen had not established that she would be restricted from practicing her faith freely in a registered church.

[16] The RAD attributed low weight to the letters submitted by Ms. Nguyen’s aunt that described restrictions on registered Catholic churches in Viet Nam (e.g., requiring churches to

sign the national anthem before mass). The RAD noted that there is no objective evidence to corroborate the aunt's information. The RAD relied on the NDP, which indicates that members of registered churches can practice their faith freely and there was no objective evidence suggesting the registered churches must put the state before God.

[17] The RAD explained why that the aunt's letters were given low weight due, noting the lack of detail and inconsistency with the objective evidence, stating:

[11] ... I agree with the RPD assessment; no information about when or which registered church she attended is provided, there is little context provided, and the evidence could not be tested as the aunt was not called as a witness. It is not clear if the aunt's experience was recent or tens of years ago; she wrote that she has been a Catholic for decades. The objective evidence states that 50 new Catholic parishes were registered in 2020. If registered churches did not worship the true God, or if they practiced Catholicism differently than in unregistered churches, I would expect that this would be mentioned in the objective evidence. There is nothing in the objective evidence to suggest they do. I afford the letter little weight in establishing that the Appellant's practice will be restricted in a registered church.

[Emphasis added; citations omitted.]

[18] The RAD then concluded that Ms. Nguyen could also practice her faith freely in an unregistered church. The RAD found that the NDP contained no evidence to support Ms. Nguyen's assertion that members of unregistered churches face persecution generally and not only when involved in political issues or activism. The RAD noted that the objective evidence indicates that the treatment of religious groups varies depending on whether a group is registered, their location, and the perceived level of threat they represent. The RAD observed that Catholic movements that are political or involve land disputes could attract attention from the government. However, the RAD noted that it is only those persons or groups that are

perceived to challenge the authority of the Communist party through activism that face a moderate risk of discrimination. The RAD noted that while some unregistered religious groups had reported interference or harassment from local authorities, the majority of cases were otherwise involved in human rights advocacy activities. The RAD noted that Ms. Nguyen resides in Ho Chi Minh City, the largest in Viet Nam with a population approaching 10 million people, and that such larger cities were more open to allowing religious observance without interference.

[19] The RAD agreed with the RPD's assessment that Ms. Nguyen did not credibly establish that the police are looking for her in Viet Nam. The RAD acknowledged that the RPD did not question the credibility of Ms. Nguyen's claim that other house church members had been arrested but found that Ms. Nguyen's own speculative testimony and/or inferences did not benefit from the presumption of truth. The RAD noted that while her aunt's letters help establish Ms. Nguyen's religious identity as a Catholic, the letters did not establish that she would be at risk of persecution, arrest, or detention upon return to Viet Nam.

III. Issues and Standard of Review

[20] Ms. Nguyen argues that the RAD made several unreasonable findings not supported by the evidence and, as a result, erred in finding that she was not a Convention refugee or a person in need of protection.

[21] The RAD is an appeal tribunal and applies the standard of correctness when reviewing a RPD decision (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 103).

[22] The issues raised by Ms. Nguyen regarding the RAD's decision are reviewed by this Court on the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 25 [*Vavilov*]; see also *Terganus v Canada (Citizenship and Immigration)*, 2020 FC 903 at para 15.

[23] 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 paras 85, 102, 105–07). A decision should not be set aside unless it contains “sufficiently serious shortcomings ... such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100). Courts should not reweigh and reassess the evidence that was before the decision maker, although they may interfere where the decision maker has fundamentally misapprehended or failed to account for the evidence (*Vavilov* at paras 125–26).

IV. The Applicant's Submissions

[24] Ms. Nguyen first submits that the RAD erred in finding that she would be able to practice her religion in Viet Nam in a registered or unregistered church.

[25] She argues that the RAD ignored or misapprehended evidence that Catholics in both underground churches and registered churches experience persecution.

[26] Ms. Nguyen submits that the RAD concluded that she could practice her religion freely in a registered or unregistered church by “disavowing” – in other words, ignoring or attributing

unreasonably low weight – to her aunt’s letters. Ms. Nguyen argues that the RAD unreasonably focused on the lack of details in the letters rather than the contents.

[27] Ms. Nguyen argues that the RAD failed to consider that her aunt was unable to testify at the RPD hearing or provide more detail in her letters because it would have put her at risk given that the Vietnamese government monitors her communications (including emails), and that Vietnamese citizens face harsh punishment for exercising their religious freedom online.

[28] Ms. Nguyen submits that the RAD’s analysis of whether unregistered Catholic worshipers in Viet Nam experience persecution is flawed. She submits that the RAD’s conclusion hinges on the fact that she has not engaged in political and human rights activities, but that freedom of religion exists or does not. Ms. Nguyen argues that her evidence demonstrates that she will not be able to practice her religion freely and openly if she returns to Viet Nam, which amounts to religious persecution.

[29] Second, Ms. Nguyen submits that her testimony as a refugee claimant should be presumed to be truthful and that her uncontradicted claims – such as her aunt’s letters stating that two members of the church were arrested – should be treated as fact (citing *Maksud v Canada (Citizenship and Immigration)*, 2005 FC 221; *Chan v Canada (Minister of Employment and Immigration)*, 1995 CanLII 71 (SCC); *Maldonado v Minister of Employment and Immigration*, 1979 CanLII 4098 (FCA) [*Maldonado*]). Ms. Nguyen submits that the RAD erred in failing to consider this uncontradicted evidence in assessing whether she would face persecution if returned to Viet Nam.

[30] Ms. Nguyen submits that her aunt's "testimonial" demonstrates why she fears persecution in Viet Nam, as her aunt and the arrested house church members are similarly situated persons. Ms. Nguyen submits that her aunt's situation is indicative of what is likely to occur to her if she returns given that she intends to continue attend an unregistered house church.

[31] Ms. Nguyen further submits that the RAD's assessment of whether she could freely practice her religion at a registered church distracts from her evidence, which suggests that she will be persecuted for attending an unregistered church.

[32] Third, Ms. Nguyen also suggests that the RAD erred by focusing on whether the police were seeking her, rather than on whether she faces a forward looking risk of persecution by practicing her religion in an unregistered church. She submits that the experience of similarly situated persons was not considered (in particular, the situation of her aunt).

V. The Respondent's Submissions

[33] The Respondent submits that the RAD's finding that Ms. Nguyen did not have a well-founded fear of persecution is based on the objective documentary evidence that demonstrates Catholics attending registered churches can worship freely. In addition, the objective documentary evidence shows that Ms. Nguyen could also practice her religion freely in an unregistered church, as she is not engaged in political activism against the Vietnamese state. The Respondent also submits that Ms. Nguyen did not establish that she is wanted by law enforcement in Viet Nam, but rather, she relies on speculation and assertions.

[34] The Respondent notes that the RAD did not disavow the letters from Ms. Nguyen's aunt, but rather, based its finding on the objective evidence in the NDP. The Respondent submits that the RAD noted Ms. Nguyen's belief that she could not practice freely in Viet Nam was unsupported by objective evidence, and it was reasonable for RAD to attribute little weight to her aunt's letters given they are inconsistent with the objective evidence.

[35] The Respondent submits that the RAD reasonably concluded that, based on the circumstances and the objective evidence in the NDP, Ms. Nguyen could also freely practice her religion in an unregistered church given she does not fall within any of the risk profiles (i.e., she is not engaged in political activism or land disputes).

[36] The Respondent further submits that the RAD also reasonably concluded that Ms. Nguyen failed to establish that she is wanted by the police. The Respondent notes that Ms. Nguyen did not submit any objective evidence regarding the police's interest in her.

[37] The Respondent notes that the RAD acknowledged that Catholics who worship in unregistered churches may face discrimination, however, the risk of discrimination is faced by those who engage in political activism against the communist party or are engaged in land disputes. The RAD also noted that the location of the unregistered church might have a bearing on possible discrimination against worshippers. However, none of these factors apply to Ms. Nguyen's circumstances.

[38] The Respondent also notes that discrimination does not constitute persecution.

VI. The Decision is Reasonable

A. *The RAD reasonably concluded that Ms. Nguyen is not at risk of persecution*

[39] The RAD reasonably concluded that Ms. Nguyen was not at risk of persecution in Viet Nam whether she chooses to practice in a registered or unregistered church. The RAD's conclusion is based on the objective evidence from the NDP; there is no evidence of restrictions on religious practices as described by Ms. Nguyen or in her aunt's letters.

[40] It is the role of the RAD as decision-maker to attribute the appropriate weight to the evidence. The RAD did not err in attributing low weight to the letters from Ms. Nguyen's aunt and finding that this information was insufficient in light of the objective evidence (*Vavilov* at para 125). Contrary to Ms. Nguyen's submission, the RAD did not "disavow" the aunt's letters. The RAD considered the aunt's letters for what they said and did not say; the letters were vague and did not align with the objective evidence in the NDP. The RAD noted:

[11] It is not clear if the aunt's experience was recent or tens of years ago; she wrote that she has been a Catholic for decades. ... If registered churches did not worship the true God, or if they practiced Catholicism differently than in unregistered churches, I would expect that this would be mentioned in the objective evidence. There is nothing in the objective evidence to suggest they do. I afford the letter little weight in establishing that the Appellant's practice will be restricted in a registered church.

[Emphasis added.]

[41] Ms. Nguyen argues that her aunt could not provide further details without increasing her personal risk. However, her aunt provided two letters despite the risk Ms. Nguyen suggests, and

neither provided more than vague accounts of the aunt's fear of attending a house church and the arrest of two unidentified and undescribed worshippers.

[42] Ms. Nguyen now also suggests that the NDP has evidentiary gaps, and the information from within and about Viet Nam cannot be relied on because it has been monitored or censored. I reject the notion that the NDP cannot be relied on. The NDP summarizes information from various independent sources and is not created by or a product of authorities in Viet Nam.

[43] The RAD considered whether Ms. Nguyen could practice in a registered or unregistered church in response to Ms. Nguyen's assertion that she practiced in an unregistered church because registered churches are required to put the state before God. The RAD found the objective evidence did not support this claim.

[44] The RAD considered the objective evidence and concluded that religious freedom for Catholics in Viet Nam was not restricted on the basis of being Catholic, but only when there is an additional factor such as political dissent, engagement in a land dispute, and/or human rights activism. Even then, the evidence is that there may be harassment and discrimination, not persecution.

[45] Ms. Nguyen testified that she was not involved in any political activities that would put her potentially at risk in Viet Nam. The RAD reasonably concluded that given her circumstances and lack of other risk factors, she would not be at risk of persecution based on her religious identity as a practicing Catholic in Viet Nam whether she chooses to practice in a registered or unregistered church.

B. *The RAD did not err in focusing on whether Ms. Nguyen would be sought by the police in Viet Nam*

[46] As noted, the RAD found that Ms. Nguyen would be able to practice her religion openly and freely in either a registered or an unregistered church. However, Ms. Nguyen claims that she would be arrested upon return because her aunt informed her that two members of her church had been arrested and because her aunt had gone into hiding. In assessing this assertion, the RAD reasonably relied on what was generally known about the country conditions in Viet Nam and considered whether Ms. Nguyen was similarly situated to others by looking at the objective evidence in the NDP.

[47] Ms. Nguyen's arguments – that the RAD erred by ignoring the “uncontradicted evidence” that other house church members were arrested when assessing whether Ms. Nguyen faced more than a serious risk of persecution and her submission that her testimony should benefit from the presumption of truth – both overstate the principle regarding the presumption of truth. The presumption of truth, based on a passage in *Maldonado*, does not mean that any assertion or belief based on information provided by others must be accepted as a fact by the RAD or the Court.

[48] In *Maldonado*, the Federal Court of Appeal stated, “[w]hen an applicant swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there be reason to doubt their truthfulness” (at 305).

[49] In *Khosla v Canada (Citizenship and Immigration)*, 2023 FC 1557, Justice Gascon aptly described the intended scope and operation of the presumption of truthfulness (at paras 31-33):

[31] ... *Maldonado* simply establishes the principle that “[w]hen an applicant swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there be reason to doubt their truthfulness” [emphasis added] (*Maldonado* at para 5). This reservation is important because it means that the presumption no longer exists when there are grounds to doubt the veracity of the allegations made in a refugee protection claim.

[32] The reason underlying the presumption of truthfulness in *Maldonado* is that claimants who have experienced certain types of emergency situations cannot reasonably be expected to always have documents or other evidence to support their claims. These circumstances may include passage through refugee camps, war-torn country situations, discrimination, or events in which claimants have only a very short period of time to escape from their agents of persecution and subsequently cannot access documents or other evidence from Canada.

[33] Where corroborative evidence should reasonably be available to establish the essential elements of a claim for refugee protection and there is no reasonable explanation for its absence, the administrative decision maker may make an adverse credibility finding based on the claimant’s lack of effort to obtain such evidence (*Ismaili v Canada (Citizenship and Immigration)*, 2014 FC 84 at paras 33, 35). The *Maldonado* presumption implies that requiring objective corroborative evidence to support the statements coming from the personal knowledge of an applicant is generally unwarranted (*Luo v Canada (Citizenship and Immigration)*, 2019 FC 823 at para 19). However, this presumption is rebuttable in several situations, such as where the evidence on the record is inconsistent with a claimant’s sworn testimony (*Lunda* at para 29), where there are grounds to find that the claimant’s testimony lacks credibility (*He v Canada (Citizenship and Immigration)*, 2019 FC 2 at para 22), or where the decision maker is not satisfied with a claimant’s explanations for the inconsistencies in the evidence (*Lin v Canada (Citizenship and Immigration)*, 2010 FC 183 at para 19). Another exception is where the evidence comes from the testimony of a third party... and not from the testimony of a refugee claimant.

[Emphasis added.]

[50] Ms. Nguyen’s aunt’s letters are not the sworn testimony of “an applicant”. Ms. Nguyen’s narrative relays what she believes based on what she has been told. Neither the aunt’s letters nor

Ms. Nguyen's assertion of what she believes based on information relayed by her aunt benefits from the presumption of the truth nor does it constitute a fact.

[51] The RAD reasonably found that Ms. Nguyen's assertion that she would be arrested was based on her subjective belief and speculation based on her aunt's letters, not on objective evidence.

[52] With respect to Ms. Nguyen's claim that the RAD ignored the experience of church members that were similarly situated to her, she has not established that she is similarly situated to the unknown persons who her aunt believes to have been arrested, or to others who have been persecuted. In order for Ms. Nguyen to claim that she faces a risk of persecution as a "similarly situated person" she must provide objective evidence of persecution of Catholics in Viet Nam, and she has failed to do so.

[53] It is not disputed that refugee claimants can demonstrate persecution by pointing to the treatment of similarly situated individuals (see for example, *Salibian v Canada (Minister of Employment and Immigration)*, 1990 CanLII 7978 (FCA); *Fi v Canada (Minister of Citizenship and Immigration) (FC)*, 2006 FC 1125), but they first must provide evidence that they are sufficiently similar to those persons described (*Fodor v Canada (Citizenship and Immigration)*, 2020 FC 218 at paras 38 [*Fodor*]).

[54] In *Fodor* at paras 38-42, the Court noted that whether a refugee claimant can rely on general evidence to show that the claimant will face a similar situation depends on: the nature of that evidence, whether the applicant is in the same class as the person described in the evidence,

and whether the claimant can show that the persecution will apply to them personally. Where the evidence is inconsistent, “there will be a greater need for the claimant to demonstrate how or why some or all of the evidence is relevant to them” (at para 42).

[55] The only example or suggestion of a risk of arrest to Ms. Nguyen was the arrest and detention of two house church members as relayed via the aunt’s letters. The RAD stated:

[22] ...The police have never searched for the Appellant, have never been to her home, and have not issued a warrant or summons for her. The Appellant is speculating that she is being sought by the Vietnamese authorities. Even during the time that her aunt went into hiding the police did not seek her. There is no credible evidence in the record that corroborates the Appellant’s claim that she would be arrested if she returned to Vietnam for participation in unsanctioned religious activities, as she submits.

[23] The first letter from the Appellant’s aunt corroborates the Appellant’s introduction to Catholicism and the house church. It also advises of the arrest of two members in August 2019, and that other members went into hiding. While the letter assists in establishing the Appellant’s religious identity, I afford it little weight in establishing her allegation that she risks being arrested and jailed if she returned to Vietnam. I find that, on a balance of probabilities, the Appellant is not wanted by the Vietnamese police.

[56] Whether Ms. Nguyen was being sought by the police is directly related to her claim that she would face persecution upon her return. The RAD reasonably concluded, based on the objective evidence, that there was no serious possibility of persecution on a Convention ground and that on a balance of probabilities Ms. Nguyen would not face a risk to her life or cruel or unusual punishment in Viet Nam.

[57] In conclusion, no error can be found in the RAD’s decision. The RAD addressed all of Ms. Nguyen’s submissions, considered and applied the relevant principles from the

jurisprudence, assessed the objective evidence, and reasonably attributed more weight to the objective evidence. While Ms. Nguyen may believe she is at risk and may fear the consequences of practicing her religion in Viet Nam, her subjective belief and fear is not supported by objective evidence. The RAD's decision bears all the hallmarks of a reasonable decision.

JUDGMENT in file IMM-4725-23

THIS COURT'S JUDGMENT is that:

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

"Catherine M. Kane"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4725-23

STYLE OF CAUSE: HOANG ANH THU NGUYEN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 19, 2024

JUDGMENT AND REASONS: KANE J.

DATED: APRIL 3, 2024

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