Federal Court  Cour fédérale

Date: 20240606

Docket: IMM-9566-21

Citation: 2024 FC 862

Ottawa, Ontario, June 6, 2024

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

JIM WONG
(A.K.A. JIAN HUANG)

Applicant

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In a decision dated December 16, 2021, the Immigration Division [ID] found the Minister had demonstrated on a balance of probabilities that the Applicant, Jim Wong (aka Jian Huang), had submitted false information to obtain corporate bank loans in China. The ID found these actions were criminal in China and that they constituted the offence of fraud under Canadian law

punishable by a term of imprisonment of up to fourteen years. The ID concluded the Applicant was inadmissible for reasons of serious criminality.

[2] Paragraph 36(1)(c) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] provides that a foreign national or permanent resident will be inadmissible to Canada on grounds of serious criminality where that individual has committed an act outside Canada that is an offence in the place where it was committed and, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years.

[3] The Applicant applies under subsection 72(1) of the IRPA for judicial review of the ID's decision. The Applicant asserts he was not responsible for any fraudulent activity in obtaining credit ratings and corporate bank loans in China. He further argues evidence provided to Canadian authorities by the Chinese Public Security Bureau [PSB] is unreliable because it may have been obtained by torture and that the ID in turn erred by relying on inadmissible evidence.

[4] The Respondent submits there is no evidence to support the assertion that evidence provided by Chinese authorities was the product of torture and the ID reasonably concluded the evidence adduced had no plausible connection to torture.

[5] I am not persuaded that the ID erred in considering the reliability of the evidence, or that the ID's findings and conclusions are otherwise unreasonable. In the absence of any error warranting intervention and for the reasons that follow, the Application is dismissed.

II. Background

[6] The Applicant is a citizen of China and was a businessperson in that country using the names “Jian Huang” and “Huang Jian.” After being issued a temporary resident visa for tourism purposes, he first entered Canada in May 2012 under the name Jian Huang. In the visa application, he reported he was married and that he and his spouse had two children.

[7] In September 2012, the Canada Border Services Agency [CBSA] was advised that Mr. Huang had committed fraudulent acts in China involving the equivalent of approximately $190 million CAD. An IRPA section 44 inadmissibility report was prepared, but the CBSA’s efforts to locate Mr. Huang were unsuccessful. The last record of Jian Huang entering Canada is the entry dated May 2012.

[8] It is now, not disputed that Jian Huang and Jim Wong are the same person. I refer to the Applicant as Jim Wong or Mr. Wong for the remainder of these reasons.

[9] In September 2013, Jim Wong submitted an application for a Canadian Temporary Resident Visa to the Canadian Embassy in Guatemala. In support of the application, a copy of a Guatemalan passport issued to Jim Wong in May 2013 was provided indicating Mr. Wong was a Guatemalan national born in China on the same date as Jian Huang. The application listed Mr. Wong as single, indicated he had never been married and stated the purpose of the visit was to visit his newborn daughter, and a friend who was also the mother of the newborn. He entered

Canada in October 2013, departed Canada on an unknown date and then re-entered Canada in December 2013. Mr. Wong has remained in Canada since then.

[10] In October 2016, Mr. Wong became a permanent resident, his application having been sponsored by his wife, the individual he had identified as a friend, and the mother of his newborn daughter in his September 2013 Temporary Resident Visa application.

[11] In February 2018, after being advised that the Guatemalan passport used by Jim Wong had been altered, the CBSA arrested Mr. Wong and initially issued an IRPA section 44(1) report alleging misrepresentation. Mr. Wong then initiated a refugee claim. A second IRPA 44(1) report subsequently issued alleging inadmissibility under paragraph 36(1)(c) of the IRPA for having committed acts outside Canada that are an offence in the jurisdiction where committed, and that would constitute an indictable offence if committed in Canada.

[12] The inadmissibility hearing proceeded before the ID over multiple days between May and September 2018. The ID's decision, which is the subject of this judicial review application, issued on December 16, 2021. The ID concluded the Applicant to be inadmissible under paragraph 36(1)(c) of the IRPA, and issued a deportation Order.

III. Decision under review

[13] Before the ID, it was alleged Mr. Wong had committed the crime of Swindling Financial Bill contrary to article 195(2) of the Criminal Law of the People's Republic of China involving the loss of more than $5,000 CAD. It was alleged that the same acts, if committed in Canada,

would constitute fraud in excess of $5,000 contrary to subsection 380(1) of the *Criminal Code*, RSC 1985, c C-46 [*Criminal Code*] and render Mr. Wong liable to a term of imprisonment not exceeding fourteen years.

[14] The ID began by acknowledging that Mr. Wong is a permanent resident of Canada and that paragraph 36(3)(d) of the IRPA therefore requires the Minister to establish the alleged acts of serious criminality on a balance of probabilities.

[15] The ID reviewed the Minister's evidence, which primarily consisted of material obtained from the PSB and included a summary of the PSB investigation [PSB Summary]. The PSB summary alleged a number of criminal offences but only the Swindling Financial Bill offence had been identified in the IRPA section 44 report. The ID therefore considered whether the evidence established that Mr. Wong had falsified three audit reports in his capacity as the legal representative of the Zhejiang Hongchang Leather Co. [Hongchang] and submitted them to the China Construction Bank [CCB] in support of loan applications. In addition, the ID considered (1) Mr. Wong's testimony; (2) the evidence on the Chinese criminal justice system provided by Mr. Wong's expert, a lawyer who lived and worked in China, and (3) objective documentary evidence from the UK Home Office, the UN Committee against Torture, Human Rights Watch, Amnesty International, Freedom House, and the US Department of State.

[16] The ID found the Applicant to be totally lacking in credibility. Noting that the only evidence in support of Mr. Wong's defence – i.e., that he had not committed the alleged offences, but instead had been framed, and that the case against him was fabricated by the PSB –

came from Mr. Wong himself. The ID rejected the defence. However, the ID also acknowledged that credibility was not necessarily determinative and that credible and reliable evidence was required to establish on a balance of probabilities that the Mr. Wong was inadmissible.

[17] Relying on both the expert evidence and documentary evidence, the ID found that the judiciary is not independent in China, but further noted that the question before the tribunal was whether the Applicant had committed a crime, not whether he would face a risk or receive a fair trial if returned to China. The ID also acknowledged that the PSB evidence was not sworn, and had not been subjected to cross-examination, which was relevant when determining the weight to be given to the evidence.

[18] The ID also accepted the objective evidence to the effect that detained suspects and witnesses are subject to mistreatment and torture in China. The ID then considered whether the PSB evidence is inadmissible on this basis, applying the test in *Mahjoub (Re)*, 2010 FC 787 [*Mahjoub*]: the named person must show a plausible connection between the use of torture and the information proffered by the Minister, who may adduce responding evidence. The Court (or tribunal in this case) must then decide whether the evidence is believed on reasonable grounds to have been obtained as a result of torture, in which case it is inadmissible (*Mahjoub* at para 59). The ID preferred this test to that set out in *France v Diab*, 2014 ONCA 374 at paras 261-264 [*Diab*], an extradition decision, because the issue is whether the evidence is admissible, not whether the Applicant is at risk of being tortured.

[19] In the absence of evidence from the Applicant (other than his own testimony which the ID found to not be credible), the ID concluded that there was no plausible connection between the evidence provided by the PSB – and advanced by the Minister – and the use of torture:

> [164] The interviews of the various witnesses took place at workplaces, homes and at PSB offices. There is no indication that any of these witnesses were detained. The fact that they were not detained distinguishes the present situation from the incidents of torture described in the general country conditions.
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> […]
>
> [168] […] As noted above, I accept that torture is used in China, including by the PSB. However, there is not a single piece of evidence that links the general country condition evidence to torture being used in Mr. Wong's case. There is no suggestion from anyone interviewed that they were tortured. While the PSB conducted interviews in Mr. Wong's case, the country evidence showed that torture was used in pre-trial detention, but there is no evidence of detention being used on anyone who was interviewed in his case. Therefore, even though I acknowledge that the "plausible connection" threshold is very low, I find that it has not been met in this particular case. Finally, even if I had found a plausible connection was made out, I would have found that, after considering the Minister's arguments and all the evidence before me, that there were not reasonable grounds to believe that any of the evidence had been obtained by torture.

[20] The ID held that country condition evidence alone was insufficient to establish that the information provided by the PSB was obtained by torture. The ID also found that allegations of police and judicial system corruption were factors to be considered in assessing the credibility and trustworthiness of foreign evidence when assessing an IRPA paragraph 36(1)(c) allegation.

[21] Citing and relying upon its finding that Mr. Wong was completely lacking in credibility, the ID rejected Mr. Wong's arguments that the evidence of certain witnesses was unreliable: the

Applicant's father and his ex-wife, business associate Liang Wensheng, and the individual who filed the initial swindling complaint with police, Wang Biaolin.

[22] The ID also declined to consider an Interpol Red Notice as evidence that Mr. Wong had committed fraud in China, noting these notices are misused by Chinese authorities. However, the ID did not accept Mr. Wong's arguments that the PSB evidence was incomplete and fell short of the Minister's disclosure obligations given the nature of the obligation in an inadmissibility hearing. The ID was also not convinced that the PSB interview records were fabricated or unreliable based on their timing or the location of the registrars and officers conducting the interviews. The ID gave no weight to the Applicant's testimony that he was threatened by government officials and a suspected leader of organized crime. The ID also rejected arguments that his signature was forged and that the serial numbers on certain bank documents among the PSB evidence were suspicious.

[23] Ultimately, the ID concluded the Applicant was responsible for falsifying three audit reports relating to the operations of Hongchang in 2008, 2009 and 2010 and for providing them to the CCB as part of loan applications. Applying *Victor v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 979 at para 37, the ID also concluded the evidence established that the elements of the offence of fraud pursuant to paragraph 380(1)(a) of the *Criminal Code*, including the *mens rea* element, had been established on a balance of probabilities. Mr. Wong was therefore found to be inadmissible pursuant to paragraph 36(1)(c) of the IRPA.

IV. Issues and Standard of Review

[24] The Applicant raises the following issues:

A. Did the ID ignore expert evidence?

B. Did the ID err in finding no plausible connection between witness statements provided by the PSB and torture?

C. Was the ID's finding that the Applicant committed fraud on a balance of probabilities unreasonable?

[25] The parties agree that the ID's 36(1)(c) finding is to be reviewed on the standard of reasonableness (*Canada (Public Safety and Emergency Preparedness) v Gaytan*, 2021 FCA 163 at para 21).

[26] A reasonable decision is a decision that is justified, transparent, and intelligible in relation to the facts and the law, in both its reasoning and the outcome (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 82-87, 99 [*Vavilov*]). A decision maker's reasons should be responsive to the issues raised by the parties, disclosing a coherent and rational chain of analysis leading to the decision made (*Vavilov* at paras 102, 127 and 128; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 31).

V. Analysis

A. *Did the ID ignore expert evidence?*

[27] Mr. Clive Ansley was qualified by the ID as an expert on the Chinese criminal justice system, Chinese criminal investigative procedures and its implications for human rights in Canada. The ID found his evidence to be credible. Specifically, the ID accepted that: (1) Chinese police routinely engage in torture to elicit confessions and statements from witnesses; (2) this frequently occurs in cases analogous to Mr. Wong's where financial crimes are alleged against Chinese nationals abroad; and (3) corruption is rampant and that statements and documents produced by the PSB in criminal proceedings are often falsified.

[28] Mr. Wong submits that, having accepted Mr. Ansley's expert testimony, the ID then erred by disregarding the expert evidence and relying on the Minister's evidence – the PSB investigation – without providing sufficient reasons for doing so. Relying on *Naeem v Canada (Citizenship and Immigration)*, 2008 FC 1375 at para 24, Mr. Wong argues the ID was required to engage in a thoughtful and comprehensive analysis of the expert evidence before disregarding it (also see *Vassey v Canada (Citizenship and Immigration)*, 2011 FC 899 at para 64; *Osman v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 1288 at para 8).

[29] Contrary to the position advanced by Mr. Wong, the ID did explain why the expert evidence did not provide a sufficient basis for rejecting the PSB investigation, including the witness statements.

[30] The ID acknowledged Mr. Ansley's evidence to the effect that; (1) a degree of mistreatment or torture is to be presumed where witnesses or suspects are detained by Chinese police, and (2) no weight should be placed on a statement made by a person in the custody of Chinese police. The ID also noted that Mr. Ansley had acknowledged he was not in a position to comment on the specific charges Mr. Wong was alleged to have committed, or the specifics of the PSB investigation.

[31] The decision demonstrates that the expert evidence was considered. In doing so, the ID found Mr. Ansley's evidence consisted largely of generalized statements relating to the Chinese criminal justice system and criminal investigative procedures and accepted that evidence. The ID also held that the evidence failed to establish that the witnesses identified in the PSB investigation were detained and that there was a lack of credible evidence specific to the Applicant's case demonstrating that those witnesses had otherwise been mistreated in the course of the investigation. On this basis, the ID concluded Mr. Wong had failed to establish a plausible connection between the evidence the Minister was relying upon and the use of mistreatment or torture.

[32] Despite having found there to be no plausible connection between the PSB evidence and the use of torture, the ID opted not to consider the statements of Mr. Wong's father or his ex-wife. This was done out of an abundance of caution, the ID again noting the absence of any evidence to suggest the statements of witnesses were obtained by torture or threat of torture.

[33] The ID was under no obligation to defer to the expert opinion in assessing the reliability of the Minister's evidence nor is the expert evidence determinative of this question (*White Burgess Langille Inman v Abbott and Haliburton Co*, 2015 SCC 23 at para 18). Having reviewed the ID's reasons holistically, I am satisfied that the ID grappled with the expert evidence and did explain its reasons for the findings made and the conclusions reached, including those that were not necessarily consistent with the views expressed by Mr. Ansley. The expert evidence was not ignored.

[34] I now turn to Mr. Wong's assertions that the ID erred in its treatment of the evidence, and its interpretation and application of the law.

B. *Did the ID err in finding no plausible connection between witness statements to the PSB and torture?*

[35] Mr. Wong submits that, in finding he had falsified the Hongchang audit reports submitted to the CCB in support of loan applications, the ID was required to rely on the evidence of Hongchang employees and CCB officials interrogated by the PSB. He argues that in the face of country condition evidence of systemic torture in the context of criminal investigations and the evidence by Mr. Ansley that was corroborative, coupled with identified irregularities within the PSB-provided witness statements, the ID erred on three grounds in refusing to exclude the PSB investigation:

A. First, it was an error to find that objective country evidence does not meet the low threshold of "plausible connection" to torture, in the absence of direct evidence of torture in this case;

B. Second, the ID unreasonably and without regard for the evidence found that;(1) the PSB did not engage in torture or mistreatment except under conditions of detention, and (2) that no witnesses were interrogated or questioned while detained by the PSB; and

C. Third, the ID misapprehended the evidentiary standard and the onus to establish no "real risk" evidence was obtained by torture.

[36] I will address each of these grounds.

(1) Plausible connection test

[37] It is not disputed that any statement or evidence obtained as a result of torture is not to be relied on as evidence in any proceeding (*Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Can TS 1987 No 36, articles 1 and 15).

[38] Determining whether evidence should be excluded on the basis that there are reasonable grounds to believe it was obtained through torture or cruel inhumane or degrading treatment [CIDT] requires the application of a two-part test. First, the party advocating for the exclusion of the evidence is required to show a plausible connection between the evidence and the use of torture or CIDT. Where the plausible connection threshold has been met, the burden shifts to the party seeking to rely on the evidence, the Minister, to demonstrate there are no reasonable grounds to believe the evidence was obtained by torture, or put differently, that there is an absence of a real risk the evidence was obtained by torture (*Mahjoub v Canada (Citizenship and Immigration)*, 2017 FCA 157 at paras 294-295 [*Mahjoub FCA*], *Diab* at paras 227-229).

[39] Although the bar to be met in satisfying the plausible connection test is low, the party seeking to exclude the evidence will normally be required to demonstrate some objective factual basis indicating a connection between the evidence and the particular circumstances of the case beyond generalized assertions of CIDT or torture by state agents (*Diab* at paragraphs 241-243). The jurisprudence recognizes that the need to adduce responding evidence will also depend on the cogency of the plausible connection evidence (*Mahjoub* at para 59). Much will depend on the facts and circumstances of the particular case (*A & Others v Secretary of State for the Home Department*, [2005] UKHL 71 at para 56).

[40] Mr. Wong argues that, on the facts and circumstances in this matter, the evidence of systemic torture involving state officials who provided the evidence against him meets the low plausible connection threshold. The ID erred, Mr. Wong argues, by concluding "country condition evidence alone" will not satisfy the threshold.

[41] Respectfully, I do not share Mr. Wong's interpretation of the ID's decision. The ID accurately summarized the applicable jurisprudence. Having done so, the ID did not hold that country condition evidence alone would never satisfy the plausible connection test. Instead, the ID noted the absence of "evidence of detention being used on anyone who was interviewed" and that "there is not a single piece of evidence that links the general country condition evidence to torture being used in Mr. Wong's case." It was on this basis, and after again noting that the country condition and expert evidence disclosed that the risk of torture was linked to circumstances of pre-trial detention, that the ID concluded the test had not been satisfied. Mr.

Wong also argues that the ID wrongly states that none of the witnesses were detained, a matter that is addressed later in these reasons.

[42] The ID did not require a direct nexus between the evidence and use of torture to meet the plausible connection threshold. Rather, the ID required some evidence indicating the steps taken in the course of the investigation engaged or triggered the circumstances where torture was reported as occurring most prevalently, that being where a person of interest was detained or held in pre-trial custody.

[43] Mr. Wong relies on the evidence disclosing that torture is used in China to further investigations involving financial crimes. The ID was aware of this evidence but was of the view that incidents of torture or CIDT "typically [take] place while people are detained." The ID's conclusion is not at odds with the evidence that torture is used in the investigation of financial crimes. The argument essentially invites the Court to reweigh the evidence.

[44] Nor did the ID fail to recognize that the use of torture in China is not limited to those situations where a witness or accused is in formal police custody or pre-trial detention. The ID acknowledged and found credible Mr. Ansley's evidence to the effect that the Chinese criminal justice system lacks procedural safeguards, that intimidation of counsel occurs and that interference with law enforcement and judiciary remains a serious problem. The ID also excluded the evidence of Mr. Wong's father and ex-wife on the basis that Mr. Wong alleged he had advised them to admit to anything the PSB wanted to avoid them being treated badly by the

PSB. As noted above, the ID excluded this evidence out of an abundance of caution despite the absence of any credible evidence to support Mr. Wong's allegation.

[45] I am satisfied that the ID's plausible connection test analysis is coherent and the conclusions reached were reasonably available to the ID in light of the facts and the applicable law. In reaching this conclusion, I also note the ID found in the alternative that "even if I had found a plausible connection was made out, I would have found that, after considering the Minister's arguments and all the evidence before me, that there were not reasonable grounds to believe that any of the evidence had been obtained by torture." This alternative conclusion is reflective of the test in *Mahjoub* which requires the tribunal to decide, on all the evidence, whether the evidence in issue is believed on reasonable grounds to have been obtained as the result of torture or CIDT.

(2) Misapprehension of the evidence

[46] Mr. Wong submits that the ID's finding that the use of torture is limited to those situations where a witness or accused is in formal police custody or pre-trial detention is not consistent with the evidence. I have addressed this argument above (see paragraph 44).

[47] Mr. Wong also argues that the ID's conclusion that "[t]here is no indication that any of these witnesses were detained" is false and without regard for the evidence. Mr. Wong notes that certain witnesses were interviewed at PSB offices and that one witness was serving a sentence at the time he was interviewed. With respect to those interviews conducted in PSB offices, Mr. Wong essentially argues the ID was required to presume those witnesses were detained and that

this evidence is sufficient to satisfy the plausible connection. I do not find Mr. Wong's argument to be persuasive.

[48] The ID was aware that certain witnesses had been interviewed "at PSB offices." The question of whether an individual has been detained requires a consideration of the totality of the circumstances (*R v Grant*, 2009 SCC 32 at para 44; *R v Suberu*, 2009 SCC 33 at paras 24-26). In this case, having acknowledged some interviews had occurred in PSB offices, the ID reiterated the absence of any case specific evidence to suggest the witnesses were subject to torture or the threat of torture.

[49] This finding was not inconsistent with the evidence. For example, a review of the witness statements identified in the Applicant's condensed book of documentary evidence demonstrates that five of the eight identified witnesses were interviewed once and the three of the witnesses were interviewed twice. None of the interviews is reported as having lasted more than three hours. In the three cases where witness were interviewed twice, those interviews are reported as having taken place more than a year apart. All of these facts are capable of supporting the ID's conclusion that the circumstances failed to disclose a plausible connection to mistreatment or torture.

[50] With respect to the witness serving a sentence, Cai Lifeng, Mr. Wrong argues he was the principal CCB witness and that his evidence must have been relied upon to support the ID's view that the evidence establishing the audit reports provided by the CCB were received from Mr. Wong. I disagree. Much of Cai Lifeng's statement is dedicated to explaining the procedure for

obtaining a loan from CCB. The statement confirms that Cai Lifeng was aware of who Mr. Wong was but had no contact with him. The ID was not required to rely on this evidence and nothing in the decision demonstrates that it did.

[51] The ID has erred in failing to address Cai Lifeng's circumstances; however, that error is not sufficient to justify the Court's intervention. Reasons are not to be reviewed against a standard of perfection.

(3) Onus to establish a "real risk" that evidence was obtained by torture

[52] The ID did not misapprehend the evidentiary standard in considering the plausible connection test or in finding that, upon satisfying the test, the burden shifts to the Respondent to demonstrate either no reasonable grounds to believe, or an absence of a real risk, that the evidence was obtained by torture. As I have set out above, the ID accurately summarized the jurisprudence on this issue and reasonably applied it (see paragraphs 40-43).

[53] Mr. Wong relies on paragraph 150 of the ID's reasons in submitting the ID has imposed a burden on the Applicant to establish a "real risk" of torture:

> [150] […] However, as noted by the Federal Court at para. 59 of *Mahjoub (Re)*, depending on the cogency of the evidence adduced by the person to show a plausible connection to torture, the Minister may not have to introduce further evidence on this point to meet that burden. In other words, a person showing a "plausible connection" to torture does not mean that there is, in the absence of other evidence, reasonable grounds to believe the evidence was obtained by torture. The standard of proof is different at each step, and it may be that evidence which is sufficient to establish a "plausible connection" to torture is not sufficient for the

> Immigration Division to find "reasonable grounds to believe" it was obtained by torture at the second step. [Emphasis added.]

[54] I am unable to read the ID's statement as imposing a burden on the Applicant beyond that of having to satisfy the plausible connection test. The ID's acknowledgement that satisfying the low threshold plausible connection test does not establish reasonable grounds to believe that the evidence was obtained by torture is an accurate reflection of *Mahjoub* at paras 55 and 59.

[55] The ID recognizes that satisfaction of the plausible connection test shifts the burden to the Minister who may then adduce responding evidence. The court or tribunal will then consider submissions and determine on the basis of all of the evidence whether there are reasonable grounds to believe evidence was obtained by use of torture. This is consistent with *Mahjoub FCA* where the Court again acknowledges the onus shifts once the plausible connection threshold has been satisfied (para 294).

[56] The ID did not shift the burden of demonstrating a real risk that evidence in the PSB investigation was obtained as a result of torture to Mr. Wong.

[57] Citing *Mahjoub FCA* at para 294, Mr. Wong argues that, where an applicant establishes a plausible connection, the Minister has an obligation to adduce evidence to satisfy the decision maker that there is no real risk. Mr Wong submits the Minister's failure to adduce evidence in this case renders unreasonable the ID's refusal to exclude evidence.

[58] Having concluded that the ID reasonably found Mr. Wong had not established a plausible connection in this case, I need not decide this issue. That said, my initial view is that there is little merit to Mr. Wong's position.

[59] *Mahjoub* provides that the decision maker is to determine the issue of real risk on the basis of all of the evidence (at para 59). To find the decision maker shall not undertake that assessment where the Minister does not adduce evidence ignores the fact that the evidentiary threshold to establish a plausible connection is lower than that to be applied in determining whether there is a real risk that evidence was obtained as a result of torture. In addition, there may also be relevant evidence on the record to be considered. That the Federal Court of Appeal acknowledges the onus shift and the Minister's responsibility to adduce evidence does not lead to the conclusion that, in the absence of evidence being adduced, exclusion of any impugned evidence must be the result (*Mahjoub FCA* at para 294).

[60] As discussed above, the ID reasonably concluded that in this case generalized expert and country condition evidence was not sufficient to satisfy the plausible connection threshold. The ID's approach to the evidence was consistent with the jurisprudence and, as held above, that conclusion is reasonable.

C. *Was the ID's finding that the Applicant committed fraud on a balance of probabilities unreasonable?*

[61] Mr. Wong submits that the ID's finding that he had provided falsified audit reports to CCB is not justified in the evidence. He submits that the witness statement from accountant Dai

Xianghui simply asserts that the audits were falsified, not that the Applicant produced and submitted them to the CCB. He argues that there is no evidence that he knowingly provided the audits to the CCB and the ID's finding that the CCB "said that those reports were received from Mr. Wong and that they were in support of credit rating and credit granting for Hongchang" is reached without citing any specific evidence in support of this conclusion. He argues, relying on *Ching v Canada*, 2015 FC 860 [*Ching*], that, instead of citing evidence, the ID improperly relied on the untested allegations of the PSB to conclude he had provided false audit reports to the CCB. He argues that the failure to cite evidentiary sources also undermines the transparency of the ID's decision and the coherency of the ID's reasoning, rendering the decision unreasonable.

[62] There was evidence before the ID to the effect that Mr. Wong was the person legally responsible for Hongchang, that he was in charge of finances, and that he was responsible to sign for Hongchang's loan applications and bank borrowing. The ID identified and summarized this evidence (ID decision at paras 46, 47, 50, and 52), and it was available to support the ID's conclusions that, on a balance of probabilities, Mr. Wong had provided falsified audit reports to the CCB, that those actions amounted to crime in China, and that those actions would constitute fraud if committed in Canada.

[63] This distinguishes the circumstances in this case from those in *Ching*. In *Ching*, the only information before the decision maker was a foreign judicial decision that this Court noted did not allow one to understand the underlying evidence (*Ching* at para 20).

[64] In this instance, the ID had access to the evidence and the ability to assess that evidence in considering the PSB investigation summary in the context of the generalized evidence of corruption within the Chinese judicial system, corruption that the ID acknowledged.

[65] That the ID did not identify the evidentiary sources relied upon in support of certain of its findings does have an impact upon the decision's transparency. However, in the context of the proceedings and the overall record, this shortcoming is not one that is central to the ID's reasoning nor does it lead me to conclude that the decision fails to exhibit the requisite degree of justification, intelligibility and transparency.

[66] Mr. Wong acknowledges that the ID did recognize that it was required to consider the nature of the Chinese judicial system, and more relevantly, the nature of the PSB in assessing the credibility and trustworthiness of the evidence. However, he submits the ID failed to undertake meaningful consideration of these circumstances and unreasonably relied upon the PSB investigation summary.

[67] I reject this argument for two reasons. First, as already been canvassed in these reasons, the ID did consider the issues of reliability and trustworthiness in the context of the analysis undertaken in considering whether Mr. Wong had demonstrated a plausible connection between the evidence and the use of torture. Second, as I have noted above, the ID did not rely exclusively on the PSB investigation summary, or PSB allegations in support of the conclusions reached.

[68] The ID did acknowledge that the evidence from the PSB was unsworn and had not been subjected to cross examination, finding this to be an issue of weight. One might expect that, where the question of admissibility pursuant to paragraph 36(1)(c) of the IRPA is before the ID, unsworn and untested evidence in the form of an investigation will often be the evidence being assessed. In addition, the ID acknowledged and addressed irregularities in the witness statements and documents.

[69] Mr. Wong asserts he has been framed by his former business colleagues, and for this reason, witness statements are not reliable. The ID rejected this assertion, finding Mr. Wong not to be credible, a conclusion that is both reasonable and not seriously disputed on this Application. Similarly, the ID considered irregularities in witness statements and documentary evidence, and explained its reasons for concluding that the irregularities did not lead to a conclusion of fabrication.

[70] Bank information and financial statements were generated independently of the PSB investigation. Beyond Mr. Wong's assertions that he has been framed, concerns relating to the reliability have not been raised. Notably, as the Respondent sets out in their written submissions, Mr. Wong does not deny having signed relevant documents in the evidence but rather testified he would sign banking documents and financial statements without reading them.

[71] The ID's finding that Mr. Wong had committed fraud, on a balance of probabilities, was not unreasonable.

VI. Conclusion

[72] The Application is dismissed. The Parties have not identified a question for certification; however, Counsel for the Applicant requested an opportunity to do so after having had the benefit of reviewing these reasons.

[73] The parties will have seven (7) days to propose a question for certification.

JUDGMENT IN IMM-9566-21

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed.

2. Either Party may propose a question for certification, by way of informal letter, no later than seven (7) days after the date of this Judgment.

"Patrick Gleeson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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