

Federal Court



Cour fédérale

Date: 20150724

Docket: IMM-7237-14

Citation: 2015 FC 903

Ottawa, Ontario, July 24, 2015

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

HUILAN SHEN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant, a citizen of the People's Republic of China, claims that she fears persecution by the Chinese government on the basis of her involvement in Falun Gong. She seeks judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA or the Act] of a decision by a Refugee Protection Division [the RPD or the

Board] that she is not a Convention refugee nor a person in need of protection in the meaning of sections 96 and 97(1) of the Act.

[1] For the reasons that follow, the application is dismissed.

II. Background

[2] The Applicant alleges that, due to her occupation as a factory worker, she was suffering from fatigue and that this led her to join a small group of practitioners, Falun Gong, in October 2010. She began meeting them weekly at the homes of different practitioners to practice the exercises and discuss Falun Gong theory. After approximately three months, she started to feel better and to be less fatigued.

[3] The Applicant claims that on December 18, 2011, her group was discovered by the Public Security Bureau [PSB] during a group practice session and after being alerted by their lookout, she was able to escape before the PSB got to them and she went into hiding.

[4] The Applicant alleges that her parents informed her the next day that the PSB was at her home looking for her and that they were advised by the PSB that she was wanted for illegal Falun Gong activities, that two of her fellow practitioners were arrested, and that she should turn herself in since hiding from them would worsen her situation. The Applicant remained in hiding until she could leave the country with the assistance of a smuggler. She was told by her parents that the PSB had returned to harass them at their home and had visited other relatives' homes looking for her.

[5] The Applicant left China on January 28, 2012 and travelled to Canada via South Korea and the United States. Her evidence at the RPD hearing was that she was guaranteed by the smuggler that he would get her out of China safely, but she does not know he did so. She testified that she did not know that she could make a refugee claim in South Korea and that she followed the smuggler's advice, to seek asylum in Canada rather than the USA since she would likely be deported on account of false information in the USA visa application that had been used for her transit there. She entered Canada by land near Vancouver and then traveled to Toronto, where she made her claim for refugee protection on February 3, 2012.

[6] After the Applicant arrived in Canada, she alleges that her parents informed her that the two fellow practitioners who had been arrested were still in custody and the PSB was continuing to come to their home to harass them about her whereabouts.

[7] At the RPD hearing, the Applicant testified that she continues to practice Falun Gong in Canada and has joined a local group of practitioners who meet every Saturday and Sunday to practice the exercises and discuss the Zhuan Falun.

III. Impugned Decision

[8] The determinative issue for the RPD was credibility and it was on this basis that it rejected the Applicant's claim for refugee protection.

[9] The RPD made a number of credibility findings in its decision, including the following:

- The Applicant was inconsistent about where and how she entered Canada;

- The Applicant, having entered South Korea and the USA legally, had two prior opportunities to seek asylum in other safe countries before reaching Canada, as such the RPD concluded that she was asylum shopping;
- The Applicant left China legally with her genuine passport, which the RPD found to be contrary to the objective documentary evidence which shows that the PSB has a sophisticated national database which contains information on wanted individuals that controls exit and entry;
- The Applicant did not provide a summons from the police and did not know if one had been issued against her, whereas the RPD concluded that, on a balance of probabilities, if the PSB was actually looking for the Applicant, a summons or arrest warrant would have been issued and that her failure to take steps to obtain the summons from Canada goes against her credibility;
- The Applicant mistook the interpreter's binder containing a glossary of English and Chinese terms and phrases relating to Falun Gong with the Zhuan Falun, a book on the teachings of Falun Gong;
- The Applicant had not joined the Falun Gong Association in Canada; and
- The Applicant appeared to have been reciting answers to questions about Falun Gong since she answered most of the questions asked by her counsel correctly, but not most of the questions asked by the Board Member.

[10] The RPD concluded that it was not satisfied that the Applicant was a genuine Falun Gong practitioner and that she was not credible.

IV. Issues

[11] The Applicant has raised the following issues:

1. Did the RPD breach the duty of procedural fairness by questioning the Applicant about external documentation that was not admitted into evidence?
2. Did the RPD reach an unreasonable conclusion based on its questioning regarding external documentation that was not admitted into evidence?
3. Did the RPD err in its assessment of the Applicant's identity as a Falun Gong practitioner?
4. Did the RPD draw unreasonable plausibility findings in connection with the Applicant's claim of being pursued by the PSB?

V. Standard of Review

[12] The issue of whether the RPD breached the duty of procedural fairness is to be reviewed on the standard of correctness (*Mission Institution v Khela*, 2014 SCC 24 at para 79, [2014] 1 SCR 502; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43, [2009] 1 SCR 339).

[13] The remaining issues are related to the RPD's fact-finding jurisdiction, including its assessment of the Applicant's credibility. Such findings are reviewed on the reasonableness standard (*Aguebor v Canada (Employment and Immigration)* (1993), 160 NR 315, 42 ACWS (3d) 886 (FCA) [*Aguebor*], *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at paras 24-26, 213 ACWS (3d) 1003).

VI. Analysis

- A. *Did the RPD breach the duty of procedural fairness by questioning the Applicant about external documentation that was not admitted into evidence?*
- B. *Did the RPD reach an unreasonable conclusion based on its questioning regarding external documentation that was not admitted into evidence?*

[14] The transcript reveals that the RPD Member first questioned the Applicant on the large yellow binder brought to the hearing by the RPD's interpreter which was a glossary of Falun Gong terms, including some terms from the Zhuan Falun. The Zhuan Falun is a book comprising the teachings of Falun Gong. This questioning only disclosed that the Applicant had received a copy of the binder from her instructor at Milliken Park where she practised. She indicated, twice, that she had a copy of the binder that had been given to her in her possession. None of this appears to have had any significance.

[15] The relevance of the binder only came alive later in the hearing when, during Applicant's questioning by her own counsel, she stated that the yellow binder was Zhuan Falun from Falun Gong. After discussion, with counsel stating that this could not be the case, counsel was provided with an opportunity to clarify the testimony. In response to counsel's question, the Applicant

indicated that the binder was the content from Zhuan Falun. Then to the further question as to what she had received from her instructor at Milliken Park, the Applicant replied that she had received the book Zhuan Falun, not the yellow binder. At this point the Member questioned the Applicant, which only confirmed the inconsistency in her answers concerning what she was given by her instructor and what was in her possession. The Member found her testimony on this point to be inconsistent.

[16] The Applicant argues that administrative decisions are only to be based on evidence that is properly before the decision-maker. The Applicant added that since the binder was not entered into evidence, it is impossible for the Court to assess the evidence and determine whether the RPD's findings were reasonable.

[17] I find however that the Member only reacted when she heard inconsistent answers to questions from the Applicant's counsel suggesting that she could not distinguish between the yellow binder and the further questioning by Applicant's counsel that disclosed the contradiction. There was no need to enter the yellow binder in evidence as the inconsistency was based upon the very different appearances and contents of the documents. The descriptions of the two documents are sufficient in the evidence that it is clear that they bear no resemblance to each other in physical appearance.

C. *Did the RPD err in its assessment of the Applicant's identity as a Falun Gong practitioner?*

[18] The Applicant also contends that the style of questioning by the Board Member was inappropriate and not effective at assessing the sincerity of the Applicant's beliefs. Regardless, the Applicant notes that the Federal Court has held that a low standard of religious knowledge is necessary to ground sincerity of belief (citing *Huang v Canada (Citizenship and Immigration)*, 2012 FC 1002 at para 15, [2012] FCJ No 1089 (QL), *Zhang v Canada (Citizenship and Immigration)*, 2012 FC 503 at paras 16-18, 409 FTR 264) and that the RPD should not examine the claimants' knowledge microscopically by focusing on a few errors or misunderstandings (citing *Dong v Canada (Citizenship and Immigration)*, 2010 FC 55 at para 20, 184 ACWS (3d) 200, see also *Wang v Canada (Citizenship and Immigration)*, 2011 FC 1030, 206 ACWS (3d) 800).

[19] I find that it was not so much that the Applicant could not respond to many of the Member's questions that was the principal concern. In fact, it was Applicant's counsel who initiated the questioning on Falun Gong, and it was at that point that the Member concluded that the Applicant's answers appeared to have been given as if by rote. Her credibility was brought into question when, contrastingly, she was unable to answer the Member's questions.

[20] It appears that the Member did not have a deep understanding of Falun Gong, and moreover on one occasion the Applicant pointed out that there was an error in finding that her answer was incorrect. Nevertheless, the "testing" of the Applicant was initiated by counsel and it was not unreasonable for the Member to pose questions when concerned about the testimony

having been scripted. Apart from the one answer which appears to have been incorrect, no submissions were made suggesting that the Applicant's other answers to the Member's questions were correct.

[21] In cases of religious persecution, the RPD is required to assess whether the person is actually an adherent of the named religion and in doing so, the member is entitled to ask questions about the basic tenets of that religion (citing *Su v Canada (Citizenship and Immigration)*, 2013 FC 4 at para 15, 224 ACWS (3d) 749 [*Su*], *Zhu v Canada (Citizenship and Immigration)*, 2008 FC 1066, 172 ACWS (3d) 459)

D. *Did the RPD draw unreasonable plausibility findings in connection with the Applicant's claim of being pursued by the PSB?*

[22] The Applicant submits that the RPD erred in finding that it was implausible that a summons would not have been issued, arguing that this conclusion is speculative and factually incorrect. Similarly, she argues that no negative inference should have been drawn from her having been able to leave China with a valid passport, even with the assistance of a smuggler, due to the PSB's exit checks using its national database. In the first instance, the country conditions documentation suggests that in the Applicant's city summons would more than likely be left with her given the number of visits. In the second case, there was no evidence of bribes by smugglers.

[23] Even accepting that this evidence together would not diminish the credibility of the Applicant, the RPD's conclusion is sufficiently founded on the totality of the evidence. For

example, the Applicant's three or four different answers to the Member in response to the simple question as to how she entered Canada, before admitting that she crossed the border illegally, is almost sufficient in itself to undermine any confidence the Board could have in the truthfulness of any of the Applicant's evidence that followed.

VII. Conclusion

[24] The Court concludes that the evidence was sufficient to support the RPD's credibility findings. The decision falls within the range of the possible acceptable outcomes and the decision is justified by intelligible and transparent reasons.

[25] Accordingly, the application is dismissed. There are no questions for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed and there are no questions for certification.

"Peter Annis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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**REASONS FOR JUDGMENT
AND JUDGMENT:** ANNIS J.

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