

Federal Court



Cour fédérale

Date: 20151005

Docket: IMM-7999-14

Citation: 2015 FC 1133

Ottawa, Ontario, October 05, 2015

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

CAIJUAN CHEN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Ms. Chen seeks to set aside the decision of the Refugee Protection Division of the Immigration and Refugee Protection Board [RPD] rejecting her claim for refugee protection. Specifically, she challenges its finding that “there is no credible or trustworthy evidence before the Panel that could have supported a positive determination in this claim.”

[2] Ms. Chen's claim for protection was based on her fear of persecution by the government of China on account of being a practitioner of Falun Gong. The evidence presented to the RPD was Ms. Chen's oral testimony, a letter from the father of an alleged co-practitioner in China who was arrested, and a summons issued by the Zhongshan City Public Security Bureau addressed to Ms. Chen. The summons reads:

As you are suspected guilty of Participating illegal Falun Gong activities, according to Article 82 of the "People's Republic of China Public Security Administration Punishment Law" you are now summoned to report to Criminal Investigation Branchon of Zhongshan City Public Security Bureau on April 1, 2014 at 15:40 for questioning. [*sic as translated*]

[3] The RPD found that there were numerous inconsistencies between the oral evidence of Ms. Chen and her written narrative. Moreover, she had no knowledge regarding many of the basic principles of Falun Gong. The RPD found that she was not credible. There is no challenge to the reasonableness of that finding.

[4] The RPD acknowledged that the claim "is not devoid of corroborative or consistent evidence." The letter was "given little weight" because it was untested as the father was not called as a witness. The RPD found that the summons "has no obvious flaws." The RPD wrote:

This document has no obvious flaws. However the cumulative effect of the negative inferences detailed above [regarding Ms. Chen's oral testimony], even in the face of this summons and the consistent testimony, is that the Claimant is not credible. In coming to this conclusion the Panel notes that fraudulent official documents are widely available in China and that the summons contains no security features other than a red stamp.

[5] In addition to finding that Ms. Chen was not a credible witness, the RPD made a finding that there was no credible basis for her claim:

The Panel finds that there is no credible or trustworthy evidence before the Panel that could have supported a positive determination in this claim. The Claimant's central allegations have all been rejected for lacking credible evidence. ... Pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act*, the Panel finds that this claim has no credible basis.

[6] Subsection 107(2) of the *Immigration and Refugee Protection Act* reads as follows:

107. (2) If the Refugee Protection Division is of the opinion, in rejecting a claim, that there was no credible or trustworthy evidence on which it could have made a favourable decision, it shall state in its reasons for the decision that there is no credible basis for the claim.

107. (2) Si elle estime, en cas de rejet, qu'il n'a été présenté aucun élément de preuve crédible ou digne de foi sur lequel elle aurait pu fonder une décision favorable, la section doit faire état dans sa décision de l'absence de minimum de fondement de la demande.

[7] The consequences of a "no credible basis" determination are significant. Pursuant to paragraph 100(2)(c) of the Act, Ms. Chen is denied an opportunity to appeal the RPD decision to the Refugee Appeal Division [RAD]. Moreover, because subsection 231(1) of the Act provides an automatic stay of removal only for applicants seeking leave to judicially review decisions of the RAD, Ms. Chen would have been required to seek a stay from the Court had the respondent taken steps to remove her from Canada before this application was determined.

[8] Ms. Chen submits that the RPD made an unreasonable assessment of the genuineness of the summons and an unreasonable decision in finding there was no credible basis for her claim.

[9] I am unable to say with any certainty that the RPD made any finding as to the genuineness of the summons. While the RPD says that the summons has no obvious flaws, which would suggest that it is accepted, it also observes that fraudulent official documents are readily available in China.

[10] This Court has consistently held that documents issued by a foreign authority are presumed to be valid: *Ramalingam v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 10, at para 5, and *Manka v Canada (Minister of Citizenship and Immigration)*, 2007 FC 522 at para 8. Accordingly, in the matter before the RPD one must ask: What evidence was there to rebut that presumption of validity? The only observations made by the RPD were that fraudulent official documents are available in China and that the summons “contains no security feature other than a red stamp.”

[11] With respect to the issue of security features, there is no evidence in the record, nor does the RPD cite any, that indicates that the document should have any additional security features. From this I infer that the RPD surmised that the document could be more easily forged than one with greater security features. However, even if true, that is not evidence that this document was fraudulent.

[12] With respect to the observation that fraudulent official documents are widely available in China, the Court reminds the RPD that it has held that the RPD should exercise caution in relying on this factor when reviewing the validity of a document. In *Cheema v Canada (Minister of Citizenship and Immigration)*, 2004 FC 224 at para 7, the Court stated:

The documents may well be forgeries, however evidence of widespread forgery in a country is not, by itself, sufficient to reject foreign documents as forgeries. As the Respondent noted evidence of widespread forgery merely demonstrates that false documentation could be available to the Applicant.

[13] As Justice Russell observed in *Lin v Canada (Minister of Citizenship and Immigration)*, 2012 FC 157 at para 54, if the fact that forged documents are widely available is a valid reason for finding that a foreign document is a forgery then this “would mean that even genuine documents would not be acceptable.”

[14] In short, although it is not clear what finding the RPD made regarding the summons, if the RPD found that the summons was not genuine on the basis of the factors it raises, then its decision was unreasonable. The only reasonable finding it could make, on these facts, is that the summons, while accepted as a genuine document, only establishes that the Public Security Bureau suspected Ms. Chen of being a Falun Gong supporter. It is not proof that she was in fact a supporter of the Falun Gong. In other words, the summons is not sufficient to overcome the finding of the RPD that Ms. Chen was not a Falun Gong practitioner. However, the RPD ought then to have considered whether the Public Security Bureau’s suspicion that Ms. Chen was Falun Gong, as evidenced by the summons, could result in her being prosecuted in China. In many respects, the summons is like the letter from the father of an alleged co-practitioner in that the weight accorded it could not overcome the RPD’s finding that Ms. Chen lacked credibility.

[15] Even so, one must ask whether the summons and letter provided “some” credible and trustworthy evidence on which Ms. Chen’s claim could succeed.

[16] In *Sheikh v Canada (Minister of Employment & Immigration)*, [1990] FCJ No 604 [*Sheikh*], the Court held that a finding of “no credible basis” is not the same as a finding that a claimant is not credible. However, if the only evidence before the RPD is the testimony of the claimant, then a general finding that he or she lacks credibility will amount to a finding that there is “no credible basis” for the claim. In *Rahaman v Canada (Minister of Citizenship & Immigration)*, 2002 FCA 89, as a corollary of the principle in *Sheikh*, the Court of Appeal held that if a claimant adduces independent and credible evidence that is capable of supporting a positive decision, then his or her claim will have a “credible basis” even if the claimant’s testimony is found not to be credible: See also *Gill v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 656 at para 14.

[17] Thus, while a “no credible basis” determination may flow automatically from a finding that the claimant is not credible where that is the only evidence offered to support the claim, the same is not the case when there is other evidence tendered. In those cases, as the Court held in *Levario v Canada (Minister of Citizenship & Immigration)*, 2012 FC 314 [*Levario*], the threshold for finding that there is no credible basis for a claim is a high one. “Thus, if there is any credible or trustworthy evidence that could support a positive determination the Board cannot find there is no credible basis for the claim, even if, ultimately, the Board finds that the claim has not been established on a balance of probabilities:”*Lavario* at para 19.

[18] In the decision under review, the RPD confused and conflated its finding that Ms. Chen was not credible with its finding that there was no credible basis for the claim. As it stated, it made this finding because the “central allegations have all been rejected for lacking credible

evidence.” But it failed to consider whether the summons and the letter was evidence that could support a positive determination. It is not necessary that such evidence considered alone would lead to a positive determination; it is only required that the evidence “could” support a positive decision. Absent a reasonable finding rejecting this evidence entirely, or a finding that this evidence could not sustain a positive determination on its own, it was unreasonable for the RPD to conclude that there was no credible or trustworthy evidence on which a positive determination could be made. Accordingly, this application must be allowed.

[19] Neither party proposed a question for certification, and there is none on these facts.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is allowed, the claim is sent back to be re-determined by a differently constituted Panel, and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7999-14

STYLE OF CAUSE: CAIJUAN CHEN v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: AUGUST 13, 2015

JUDGMENT AND REASONS: ZINN J.

DATED: OCTOBER 5, 2015

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