

Federal Court



Cour fédérale

Date: 20160108

Docket: IMM-806-15

Citation: 2016 FC 33

Ottawa, Ontario, January 8, 2016

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

ZHENGUO JIA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Zhenguo Jia is a citizen of China. He sought refugee protection in Canada on the ground that he is a practitioner of Falun Gong. The Refugee Protection Division [RPD] of the Immigration and Refugee Board found that Mr. Jia was not a credible witness and was not a genuine Falun Gong practitioner. The RPD therefore determined that he is neither a Convention refugee under s 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], nor a

person in need of protection as defined by s 97 of the IRPA. Mr. Jia has brought an application for judicial review of this decision pursuant to s 72 of the IRPA.

[2] For the reasons that follow, I have concluded that the RPD's analysis sometimes lacked justification and transparency. However, the RPD's finding that Mr. Jia was not a genuine practitioner of Falun Gong falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law. As this was the determinative issue before the RPD, the application for judicial review must be dismissed.

II. Background

[3] Mr. Jia is 39 years old. He is from Hebei Province in China. His claim for refugee protection was based on the following assertions.

[4] In September 2010, Mr. Jia began to suffer back pain due to his work in the construction industry. In December 2011, Mr. Jia's friend Lin Hui informed him of the health benefits of practising Falun Gong, a spiritual movement that is outlawed in China. In February 2012, Mr. Jia joined Mr. Hui's practice group and began to learn the Falun Gong exercises.

[5] On July 29, 2012, Mr. Jia was practising his new faith in a group session when it was raided by the Chinese Public Security Bureau [the PSB]. Mr. Jia escaped and went into hiding. The PSB subsequently searched his family's home and brought his wife to their offices for questioning. The PSB also arrested Mr. Hui and another member of Mr. Jia's practice group.

[6] The PSB visited Mr. Jia's home more than 20 times. On August 2, 2012, they left a Notice of Summons with his wife.

[7] Fearing the PSB, Mr. Jia left China with the help of a smuggler. He arrived in Canada on October 24, 2012, and submitted a claim for refugee protection on October 26, 2012.

III. The RPD's Decision

[8] The RPD was not satisfied that Mr. Jia was a genuine practitioner of Falun Gong, either in China or in Canada, or that he was sought by the PSB. The RPD found that Mr. Jia had fabricated his story to support his refugee claim, and concluded that he would not face a serious risk of persecution if he returns to China.

[9] First, the RPD noted that Mr. Jia struggled to provide answers to basic questions, and showed a lack of understanding of the fundamental principles of Falun Gong.

[10] Second, the RPD found many aspects of Mr. Jia's version of events to be implausible. For example, the RPD did not accept that the PSB would fail to issue an arrest warrant after visiting his home more than 20 times, particularly given that he had not responded to the Notice of Summons. The RPD placed little weight on the documents submitted by Mr. Jia to corroborate his claim, because it determined that they were likely fraudulent.

[11] Third, Mr. Jia testified that his family continued to lead their lives free of intimidation by the PSB. The RPD found this to be inconsistent with documentary evidence indicating that family members of Falun Gong practitioners are subject to punishment and persecution.

[12] Finally, the RPD rejected Mr. Jia's claim that his attendance at a Falun Gong event in Toronto made him a *sur place* refugee.

IV. Issues

[13] This application for judicial review raises the following issues:

- A. Was the RPD's finding that Mr. Jia was not a genuine practitioner of Falun Gong reasonable?
- B. Was the RPD's finding that Mr. Jia is not sought by the PSB reasonable?
- C. Was the RPD's finding that Mr. Jia was not a *sur place* refugee reasonable?

V. Analysis

[14] The RPD's findings regarding Mr. Jia's credibility and his *sur place* claim are both subject to review by this Court against the standard of reasonableness (*Li v Canada (Minister of Citizenship and Immigration)*, 2011 FC 941 at paras 14-15; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

A. *Was the RPD's finding that Mr. Jia was not a genuine practitioner of Falun Gong reasonable?*

[15] A refugee claimant's sworn testimony is presumed to be true unless there are reasons to doubt its veracity (*Maldonado v Canada (Minister of Employment and Immigration)*, [1979] FCJ No 248, [1980] 2 FC 302 at para 5). In assessing a refugee claimant's sworn testimony, the RPD is entitled to consider its plausibility, and to apply common sense and rationality (*Ye v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1221 at para 29). Where the evidence before the RPD is inconsistent with the claimant's sworn testimony, the presumption of truth is rebuttable (*Adu v Canada (Minister of Employment and Immigration)*, [1995] FCJ No 114, 53 ACWS (3d) 158 (FCA)).

[16] Mr. Jia says that the RPD engaged in an overly-stringent examination of his religious knowledge. He relies on several decisions of this Court which hold that the threshold for an adequate knowledge of a religion is low (e.g., *Huang v Canada (Minister of Citizenship and Immigration)*, 2008 FC 346 at paras 10-11 [*Huang*]; *Lin v Canada (Minister of Citizenship and Immigration)*, 2012 FC 288 at paras 59-61).

[17] The RPD is entitled to probe whether a claimant's story is credible by asking questions about the basic tenets of his faith (*Zhu v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1066 at para 17). It is open to the RPD to disbelieve a claimant whose knowledge does not correspond to the duration and depth of his religious activities. However, it is unreasonable for the RPD to assess the genuineness of a claimant's religious belief by engaging in what amounts to a trivia quiz (*Wu v Canada (Citizenship and Immigration)*, 2009 FC 929 at para 22).

[18] In this case, the questions put to Mr. Jia were not particularly difficult. Contrary to *Huang*, I do not believe that the RPD held Mr. Jia to a “better than average working knowledge” of the principles of Falun Gong. Rather, the RPD assessed whether Mr. Jia had “a reasonable working knowledge of the contents of the text and some of its applications to his chosen lifestyle, even if he did not understand all of its substance.” The RPD’s factual determinations are entitled to deference by this Court, and this Court will intervene only if the RPD unreasonably expects more than a particular claimant can offer (*Su v Canada (Minister of Citizenship and Immigration)*, 2013 FC 4 at para 16, citing *Hou v Canada (Minister of Citizenship and Immigration)*, 2012 FC 993 at para 54 [*Hou*]). It is true that the RPD asked Mr. Jia some questions that veered towards trivia, such as “where in the text Zhuan Falun did Master Li discuss the concept of health?” However, for the most part the RPD asked open-ended questions about how Mr. Jia applied the principles of Falun Gong to his daily life. On balance, I am satisfied that the RPD did not engage in a microscopic analysis of the sincerity of Mr. Jia’s religious beliefs.

[19] The RPD observed that Mr. Jia’s practice of Falun Gong exercises was “simply analogous to the practice of Qigong, an ancient Chinese form of training [...] and as Master Li the founder of Falun Gong has indicated, does not define that individual as a genuine Falun Gong practitioner.” In so doing, the RPD appears to have repeated the error found in *Huang v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1002 at para 16, where Justice Mandamin held that it was unreasonable to discount a claimant’s Falun Gong exercises “as no better than qigong exercises” because this involves interpreting the claimant’s subjective

understanding of a religious requirement, contrary to the Supreme Court of Canada's decision in *Syndicat Northcrest v Amselem*, 2004 SCC 47.

[20] However, this was not the sole basis for the RPD's finding that Mr. Jia was not a genuine practitioner of Falun Gong. The RPD based its assessment on Mr. Jia's sworn testimony, his credibility, and the discrepancy between his evidence and established facts pertaining to the practice of Falun Gong. The RPD was principally concerned about Mr. Jia's inability to provide spontaneous answers to questions, and his inability to "identify simple common aspects of his practice of Falun Gong." A review of the transcript confirms that Mr. Jia was prompted on almost every question. I am therefore satisfied that the RPD's rejection of Mr. Jia's credibility, considered as a whole, falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law.

B. *Was the RPD's finding that Mr. Jia is not sought by the PSB reasonable?*

[21] Mr. Jia argues that the RPD's conclusion that he is not sought by the PSB was based on findings that were factually incorrect and improperly speculative. He disputes the RPD's finding of implausibility regarding the PSB's failure to issue an arrest warrant for him after more than 20 visits to his home. He also takes issue with the RPD's rejection of the Notice of Summons and prison visitation card as fraudulent.

[22] The RPD acknowledged that the documentary evidence regarding the issuance of arrest warrants is inconsistent. The RPD cited only one document, "Criminal Procedure Law of the People's Republic of China", to support its finding that a Notice of Summons is "the

documentary basis for the subsequent issuance of an arrest warrant.” The RPD did not refer to a Response to Information Request [RIR] dated July 6, 2010, which states that the issuance of arrest warrants is “rare.” The RPD’s conclusion appears to rest on assumptions and subjective beliefs about how the PSB would rationally behave in the circumstances. I agree with Mr. Jia that the RPD’s finding on this point was improperly speculative.

[23] I acknowledge that it may have been open to the RPD to find that the PSB’s inaction was inconsistent with Mr. Jia’s testimony regarding the number of times that the PSB visited his home (*Cao v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1398 at para 35; *Zhang v Canada (Minister of Citizenship and Immigration)*, 2011 FC 654), and Mr. Jia’s admission that his family had not been intimidated by the PSB. The RIR dated October 18, 2013, states that family members of Falun Gong practitioners suffer various degrees of persecution, and Chinese authorities have detained supporters of Falun Gong members in Hebei Province. However, this Court has warned against unwarranted findings of implausibility in this regard: *Chen v Canada (Minister of Citizenship and Immigration)*, 2014 FC 749 at paras 53-54.

[24] The RPD provided three reasons for rejecting the authenticity of the documents that Mr. Jia offered to corroborate his claim: (i) the availability of fraudulent documents throughout China; (ii) Mr. Jia’s departure from China using a fraudulent Canadian visa; and (iii) the fact that the Notice of Summons was not produced “with any known security features and is printed on plain stock.” The RPD expressed similar concerns regarding the prison visitation card, noting that the document was a photocopy and not an original; the photocopy did not permit a clear

view of the photograph or the contents of the document; information may have been written over the official stamp; and the seal was not continuous.

[25] The RPD's analysis raises a number of concerns. First, I agree with Mr. Jia that the general availability of fraudulent documents in China is not sufficient reason to doubt the authenticity of documents (*Lin v Canada (Minister of Citizenship and Immigration)*, 2012 FC 157 at para 53). Second, I agree that the RPD's adverse finding of credibility based on Mr. Jia's past use of a fraudulent document in China was unreasonable (*Rasheed v Canada (Minister of Citizenship and Immigration)*, 2004 FC 587 at para 18). Third, it appears that the RPD began with the premise that Mr. Jia's credibility was doubtful, and then proceeded to assess the genuineness of the corroborative documents in a cursory manner.

[26] In my view, the RPD's reasons for finding that Mr. Jia was not sought by the PSB were lacking in justification and transparency. However, given its reasonable finding that Mr. Jia was not a genuine practitioner of Falun Gong, this is insufficient to overturn the RPD's decision.

C. *Whether the RPD's finding that Mr. Jia was not a sur place refugee was reasonable*

[27] The RPD is entitled to conduct its *sur place* analysis in light of its finding that the original refugee claim is not genuine (*Zhou v Canada (Minister of Citizenship and Immigration)*, 2015 FC 5 at para 23 [*Zhou*]; citing *Hou* at para 57). The RPD must nevertheless determine, either implicitly or explicitly, whether events that have occurred since a claimant's departure from his country of origin have caused him to become a member of a persecuted group, and whether he would now face persecution upon his return.

[28] I am satisfied that the RPD properly considered the evidence that was before it, and reasonably concluded that Mr. Jia acquired his knowledge of Falun Gong following his arrival in Canada “in order to advance a fraudulent refugee claim” (*Meng v Canada (Minister of Citizenship and Immigration)*, 2015 FC 365 at para 27). It was therefore reasonable for the RPD to place little or no weight on photographs of Mr. Jia attending a protest outside the Chinese consulate, and unsworn letters from alleged Falun Gong practitioners (*Zhou* at paras 22-25).

[29] Although the country condition reports confirm that Chinese authorities are motivated to monitor Falun Gong practitioners in Canada and have the means to do so, there was no evidence to suggest that Mr. Jia had himself been identified by Chinese authorities. When Mr. Jia was asked whether he was worried about participating in such activities in Canada, he said that he was not. This led the RPD to find that Mr. Jia did not have a well-founded, subjective fear of persecution based upon his actions in Canada. In my view, this finding was reasonable.

VI. Conclusion

[30] For the foregoing reasons, the application for judicial review is dismissed. No question is certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified for appeal.

“Simon Fothergill”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

Elyse Korman
Esther Lexchin

FOR THE APPLICANT

Maria Burgos

FOR THE RESPONDENT

SOLICITORS OF RECORD:

OTIS & KORMAN
Barristers and Solicitors
Toronto, Ontario

FOR THE APPLICANT

William F. Pentney
Deputy Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT