

Federal Court



Cour fédérale

Date: 20160509

Docket: IMM-4822-15

Citation: 2016 FC 516

Ottawa, Ontario, May 9, 2016

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

MENGLING WU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS
(judgment delivered from the bench)

[1] This is a judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act], of a September 28, 2015 decision by the Refugee Protection Division [RPD] of the Immigration and Refugee Board rejecting the Applicant's application for refugee protection.

[2] The Applicant is 21-year old citizen of China who makes the following claim and allegations. Having found no migraine relief from both Western and Traditional Chinese medical professionals, including consulting doctors on six occasions, namely seeing a neurologist three times and an internal medicine doctor three times, she states that she turned to Falun Gong. This was in spite of advice for her to have a follow-up brain scan from a doctor at an outpatient internal medicine department.

[3] Shortly thereafter, the Public Security Bureau [PSB] raided her practice group. She then went into hiding, later learning that the PSB was looking for her and that she had been dismissed from her job. She was ordered to report to the PSB; when she did not, a summons was issued. With the assistance of a smuggler, she applied at Guangzhou's US Consulate for a visitor visa to that country. She made that application without concealment and, using her own passport, managed to fly out of China and enter Canada.

[4] The RPD concluded that the Applicant was not credible and further that her claim lacked a credible basis. First, the RPD held that her rationale for beginning to practice Falun Gong was implausible: she had some education in nursing, worked in a hospital, knew that Falun Gong was illegal, and had only made minimal efforts to access modern medical treatment after her migraines began.

[5] Second, the RPD held it was equally implausible that she came out of hiding to visit the US Consulate in Guangzhou with the smuggler, in light of documentary evidence suggesting that suspected dissidents are heavily monitored by the Chinese authorities.

[6] Third, also due to documentary evidence of state monitoring, the Board found her exit from China to be highly suspect, given that she went through exit control points at airports in both Guangzhou and Beijing on her own passport and without any concealment.

[7] The RPD concluded that, had the Applicant really been in hiding from the PSB, both her acquisition of her visa and her flight out of the country would not have been so straightforward.

[8] In addition, the RPD found that the Applicant's documentary evidence of her Falun Gong practice, including two letters of support and some photographs of her performing exercises in Canada, was insufficient: Falun Gong group practices are open to the public and the letters of support she submitted from those that had allegedly practiced with her in Canada were unsworn.

[9] The Applicant also submitted a PSB summons in her name, though the RPD concluded that it was not likely to be genuine based on both its simplicity - a single page with black ink and red stamps - and the ease with which documents are fraudulently forged in China.

[10] In light of all of the above, the RPD rejected the Applicant's claim for refugee protection on the basis of a lack of credibility or evidence. The RPD also found the Applicant's claim to have no credible basis.

[11] The Applicant contends that the RPD made three reviewable errors: first, unreasonable credibility findings; second, an unreasonable *sur place* assessment; and third, an unreasonable no credible basis finding. While it is unclear that the RPD erred with respect to the first two issues, I

find it unnecessary to pronounce on them, as I agree with the Applicant that the third issue raised – the no credible basis finding – was unreasonable.

[12] A finding of “no credible basis” under subsection 107(2) of the Act may only be made where there is no credible or trustworthy evidence on which the RPD could make a positive finding (*Sterling v Canada (Citizenship and Immigration)*, 2016 FC 329 at para 13). This is a high threshold that limits an Applicant’s subsequent procedural rights and the RPD must, before reaching it, look to the objective documentary evidence for any trustworthy or credible support for an Applicant’s claim. Importantly, to say that the Applicant lacked credibility is not the same as saying that the Applicant’s claim has no credible basis (*Pournaminivas v Canada (Citizenship and Immigration)*, 2015 FC 1099 at paras 7-9).

[13] The RPD, in reaching its decision, did not address one significant piece of evidence submitted by the Applicant: a letter of dismissal that she received from her employer. That letter mentions her status as a Falun Gong practitioner and states that it was a basis for her termination. Certainly the letter could provide some credible evidence that could ground a positive finding, especially in light of the documentary evidence that suggests the state both pursues and monitors Falun Gong practitioners.

[14] In making a no credible basis finding, the RPD has an obligation to assess all the evidence and expressly state its reasons for its conclusion (*Geng v Canada (Citizenship and Immigration)*, 2001 FCT 275 at para 23). While the RPD is entitled to evaluate and weigh the evidence as it sees fit, it is unreasonable to conclude that the Applicant’s claim lacks any credible

basis whatsoever in this particular matter when the RPD did not reject this letter or otherwise even explicitly consider it.

JUDGMENT

THIS COURT'S JUDGMENT is that this judicial review is granted. There are no costs or certified questions.

"Alan S. Diner"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4822-15

STYLE OF CAUSE: MENGLING WU v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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