

Federal Court



Cour fédérale

**Date: 20160630**

**Docket: IMM-4974-15**

**Citation: 2016 FC 740**

**Toronto, Ontario, June 30, 2016**

**PRESENT: The Honourable Mr. Justice Hughes**

**BETWEEN:**

**BINGHONG QIU  
GIULAN ZHU  
ZHIHENG QIU**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is a judicial review of a decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Protection Board of Canada dated October 14, 2015 wherein it was determined that the Applicants' claim for refugee protection had no credible basis, and that the Applicants were not Convention refugees and are not persons in need of protection therefor their claims were rejected.

[2] The Applicants are a husband and wife and their son, all are citizens of China. The principal applicant, the husband, claimed that the government expropriated his pig farm but offered inadequate compensation. He claims that he and others protested vigorously whereupon the Public Security Bureau (PSP) came to his house with a summons for his arrest. He claims many others were arrested and his son was suspended from school. The Applicants went into hiding and, with the aid of a smuggler found their way to Canada. They apparently were able to exit China and to obtain a US Visa in China without incident.

[3] The RPD Member made findings a number of times that the Principal Applicant's evidence was not credible. The Member also addressed some of the documents submitted by the Applicants in support of their claim. The Member noted in particular the Principal Applicant's admission that he "improperly obtained" a US visa to exit China (paragraph 21 of his Reasons). It is important to note that the evidence is not that the US Visa is a fake or forgery; the evidence of the Principal Applicant is that, in certain respects he provided false information to the US authorities in order to obtain the visa (CTR pages 538-539).

[4] At paragraph 22 of his Reasons the Member places "little weight" on the summons provided in evidence as it did not have "any known security features and is printed on plain stock". He commented upon "the ease with which one can get fraudulent documents in China."

[5] The Member made no comment or finding in other documents presented in evidence by the Applicants including a Notice of Expropriation, a Notice of Compensation, an Evaluation Report, a Notice of Suspension of the son from school and a Prison Visiting Card, all of which

were translated from Chinese to English and apparently bear official stamps. These documents, if properly considered, could have some bearing on the credible basis of the Applicants' claim. As Justice Russell of this Court wrote in *Ru v Canada (Minister of Citizenship and Immigration)*, 2011 FC 935 at paragraph 20, there may be good reason to be suspicious but there may be no good evidence that the documents are fraudulent. As Justice Rennie (when he was in this Court) wrote in *Chen v Canada (Minister of Citizenship and Immigration)*, 2013 FC 311 at paragraphs 20 and 21 the Board should not reach a conclusion as to credibility after considering certain evidence and then find other evidence not to be credible simply based on that earlier conclusion. The documents including those referred to above should have been independently considered.

[6] The principal issue in this case is whether, on the evidence, the RPD should have found that the claims "do not have a credible basis." A "no credible basis" finding has certain practical effects, one is that there can be no appeal to the Refugee Appeal Division (subsection 110(2)(c) of the *Immigration and Refugee Protection Act* (IRPA), SC 2001, c. 27 as amended) however, this does not preclude an application for leave to commence an application for judicial review of the RPD decision cannot be made directly to this Court as was done in the present case. Another effect that a "no credible basis" decision can have is that there is no automatic stay of removal that would otherwise have occurred were there an outstanding appeal to the RAD (IRPA Regulations, subsection 231(11)). Accordingly, this Court has set a high threshold before a "no credible basis" finding can be made (*Ramón Levario v Canada (Minister of Citizenship and Immigration)*, 2012 FC 314).

[7] The basis upon which a “no credible basis” finding could be made has been summarized in many cases. I will cite Justice Rennie (as he then was) in *Levario, supra*, at paragraphs 18 and 19.

*[18] The threshold for a finding that there is no credible basis for the claim is a high one, as set out in Rahaman, at para 51:*

*...As I have attempted to demonstrate, subs. 69.1(9.1) requires the Board to examine all the evidence and to conclude that the claim has no credible basis only when there is no trustworthy or credible evidence that could support a recognition of the claim.*

*[19] 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.*

[8] In the present case, I am satisfied that the decision under review must be set aside at least so far as it makes a finding that the claims “do not have a credible basis.” I do so because the lack of attention to the documents discussed previously herein indicates that, had the documents been properly considered, there “could” have been something to support a positive finding in favour of the Applicants.

[9] In the absence of a “no credible basis” finding, the decision under review could have been appealed to the RAD with benefits to the Applicants of a statutory stay. I deliberately make no finding on the conclusions otherwise reached by the RPD that the claimants are not Convention refugees and are not persons in need of protection, whereby their claims were rejected. I wish to leave that as an open issue for the RAD to decide.

[10] How best to craft a Judgment in this case is a concern. Justice Phelan of this Court endeavoured to find a way to do so in *Mahdi v Canada (Minister of Citizenship and Immigration)* 2016 FC 218 where he provided for a thirty day stay of his decision so as to allow for an appeal to the RAD.

[11] I propose something different. This is a judicial review which is governed by *the Federal Courts Act*, RSC 1985, c. F-7. Subsection 18.1(3)(b) of that *Act* provides that I can refer a matter back to the tribunal in question with such directions as may be appropriate.

[12] Therefore, I will return the matter to the RPD with directions that that portion of the decision declaring that there is no credible basis for the claim be set aside and that an amended decision to that effect be issued bearing the date of the amendment. On that basis, the RPD would not need to conduct any further hearing and an appeal to the RAD would be possible.

[13] The parties have asked for time to make submissions as to a certified question.

**JUDGMENT**

**FOR THE REASONS PROVIDED:**

**THIS COURT'S JUDGMENT is that:**

1. That part of the decision of the Refugee Protection Division under review in which it was determined that the Applicants' claims do not have credible basis, is set aside;
2. The matter is returned to the Refugee Protection Division with a direction that an amended decision be issued, dated as of the date of that issue, wherein the finding of no credible basis, is removed;
3. Either or both parties may make a submission as to a certified question within fifteen (15) days from the date of this Judgment;
4. No Order as to costs.

“Roger T. Hughes”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4974-15

**STYLE OF CAUSE:** BINGHONG QIU, GIULAN ZHU, ZHIHENG QIU v  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 29, 2016

**JUDGMENT AND REASONS:** HUGHES J.

**DATED:** JUNE 30, 2016

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