

Federal Court



Cour fédérale

**Date: 20170315**

**Docket: IMM-2333-16**

**Citation: 2017 FC 279**

**Ottawa, Ontario, March 15, 2017**

**PRESENT: The Honourable Madam Justice Roussel**

**BETWEEN:**

**LIANA WAHJUDI  
DAVY TRISURJANA LISTIANTO  
BENJAMIN NICHOLAS KEEFE  
VINCE DAVE CASEY**

**Applicants**

**And**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicants, Mrs. Liana Wahjudi, her husband Mr. Davy Trisurjana Listianto, and their two (2) minor children are citizens of Indonesia. They arrived in Canada in July 2015 and claimed refugee protection one month later.

[2] The Applicants claim to be Christians of Chinese ethnicity. They allege having experienced many problems because of their ethnicity and religion including institutional discrimination and being blamed for accidents they did not cause. They also claim to fear heightened Islamic extremism from the Islamic Defenders Front [FPI] group, should they return to Indonesia. Finally, Mrs. Wahjudi further alleges fear of being sexually assaulted as an ethnic Chinese woman.

[3] In a decision dated December 16, 2015, the Refugee Protection Division [RPD] rejected their claim, concluding that they were neither “convention refugees” nor “persons in need of protection”. The RPD found that the Applicants’ delay in seeking international protection made their allegations of past persecution less credible. The RPD also found that while there were tensions between the various religions in Indonesia, there was no evidence that the Christians were systematically targeted or that the Applicants had suffered any physical violence in the past. For these reasons, the RPD found that the Applicants had failed to establish, in their personal circumstances, a serious possibility of persecution on the ground of their Christian religion. The RPD also found that Mrs. Wahjudi had not demonstrated a serious possibility of persecution based on her gender.

[4] The Applicants appealed this decision to the Refugee Appeal Division [RAD] and argued that the RPD erred in its assessment of their credibility and determination of past and future persecution. On May 12, 2016, the RAD dismissed the appeal and upheld the decision of the RPD.

[5] The Applicants now seek judicial review of the RAD's decision. They argue that it was unreasonable for the RAD to uphold the RPD's negative credibility finding and secondly, that the RAD engaged in an unreasonable assessment of the past and future persecution of the Applicants.

## II. Analysis

### A. *Standard of review*

[6] The reasonableness standard of review applies when this Court is reviewing a decision of the RAD (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35 [*Huruglica*]). The Court should not intervene if the RAD's decision is justifiable, transparent and intelligible and if it is within the range of possible, acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

[7] Moreover, it is not the function of this Court upon judicial review to substitute its own view of a preferable outcome and to reweigh the evidence that was before the RAD and the RPD (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59, 61). The RAD's decision "should be approached as an organic whole, without a line-by-line treasure hunt for error" (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 14, 16; *Gong v Canada (Citizenship and Immigration)*, 2017 FC 165 at para 7).

B. *Credibility*

[8] The Applicants submit that it was unreasonable for the RAD to conclude that the RPD was right in doubting the credibility of Mrs. Wahjudi because of two (2) statements she made during her testimony regarding her fear of the FPI. They further submit that it was unreasonable for the RAD to conclude that Mrs. Wahjudi did not know much about the FPI and to allow this to impact the credibility of the Applicants' allegations. The Applicants also contend that it was unreasonable for the RAD to conclude that the Applicants' travel activity demonstrated a lack of subjective fear.

[9] While I agree that the RAD noted the RPD's concerns regarding Mrs. Wahjudi's testimony with respect to why the Applicants feared the FPI, the RAD's decision to uphold the RPD's finding is not based solely on the contradiction raised in her testimony before the RPD.

[10] The RPD found that Mrs. Wahjudi had difficulties explaining why she feared persecution and that she was unclear on whether the FPI would target the Applicants because of race or religion. Her answer to this question changed from saying that religion did not matter to the FPI to, later in the hearing, stating that the FPI targets Christians. The RPD found this to be a clear contradiction that caused it to doubt her knowledge of the FPI.

[11] In rejecting the Applicants' argument that this was a case of intersectional persecution where they were targeted because of both their ethnicity and religion, the RAD found that the RPD's credibility concerns stemmed from Mrs. Wahjudi's lack of knowledge of the FPI, not

solely the contradiction in her testimony. The RAD concluded that Mrs. Wahjudi's lack of knowledge resulted from the fact that the Applicants had not been targeted for either their ethnicity or religion or personally witnessed such violence against others in the past.

[12] The RAD also noted the RPD's finding that the Applicants' travel behavior prior to arriving in Canada demonstrated a lack of subjective fear. In its decision, the RPD described that when asked about when she first thought of leaving Indonesia definitively, Mrs. Wahjudi responded that she had tried to leave in 1999 because of the events of 1998 in Jakarta, although nothing had happened in her home city of Surabaya. She explained that she was denied a Canadian visa in 2004. As her husband and children failed to obtain visas from the United States of America, she did not apply for a visa from there, or from any other country. She instead started a business in Indonesia. She only applied for a visa to travel abroad in 2014. She further testified before the RPD that she came to Canada in November 2014 to visit her adult son studying in Canada because he could only get this "kind of education" in Canada. After visiting him, she returned to Indonesia in December. The rest of the family applied for visas only in April 2015, and they all waited until July to flee their country. The RPD found that Mrs. Wahjudi's return to Indonesia and the delay of the family in leaving Indonesia were contrary to their alleged subjective fear and negatively affected their credibility as the Applicants did not act as if they truly feared persecution or were in need of protection.

[13] While the RAD reviews a decision of the RPD on a standard of correctness, it may defer to the RPD's credibility findings when the RPD enjoys a particular advantage over the RAD, for instance when the RPD hears and sees the witnesses (*Huruglica* at para 103). Given the

particular advantage enjoyed by the RPD, the RAD deferred to the RPD's conclusions regarding the credibility of the Applicants' allegations and the absence of subjective fear. The RAD also noted the specific allegations of discrimination the Applicants referred to, for instance a corrupt officer who accused Mr. Listianto of causing an accident and asked for a bribe, or the trouble and disruption by Muslims that the church of Mr. Listianto's brother faced, occurred over a decade ago. However, the RAD found that the Applicants' behaviour in terms of their travel and visa activities did not show subjective fear such that the RPD could accept their allegations that the situation faced by them constituted "a level or risk or severity, even viewed cumulatively, which would require the protection of Canada".

[14] Upon review of the RAD's decision, I find that its analysis and conclusion upholding the RPD's credibility findings clearly demonstrate the basis on which it reached its conclusions. As such, the RAD's finding is reasonable and there is no basis for this Court to intervene.

C. *Past and future persecution*

[15] The Applicants further submit that the RAD engaged in an unreasonable assessment of the Applicants' past and prospective persecution, particularly in relation to its assessment of country conditions. In its decision, the RAD twice stated that the Applicants had failed to provide any specific documentation pertaining to FPI activities in Surabaya, East Java where the Applicants lived. The Applicants argue that these findings are wrong given that they had filed a document before the RPD that was directly about a FPI attack in Surabaya entitled "Extremists attack a peaceful Muslim-Christian conference in Surabaya". They also rely on an article by the International Religious Freedom Report for 2013 Indonesia, included in the national

documentation package for Indonesia, which stated that the two (2) provinces most affected by religious violence were West Java and East Java. Surabaya is the capital of East Java.

[16] The RAD's finding regarding the absence of specific documentation related to the problems faced by ethnic Chinese and Christians or FPI activities in Surabaya is indeed contrary to the evidence on the record. Although this finding is not defensible on the record if considered in isolation, I am nevertheless of the view that this error is not determinative. While the RAD indicates on two (2) instances that there is no specific documentation, it also stated on another occasion that there was "an absence of much, if any" specific documentary evidence.

[17] Moreover, the RAD noted that the city of Surabaya is a city of more than six (6) million people in its metropolitan area and that it is situated on the island of Java which itself has a population of close to one hundred and fifty (150) million people. The RAD also acknowledged the Applicants' allegation that the FPI were growing "stronger and stronger and holding more intense demonstrations" and that the Applicants had identified many examples of discrimination and violence in the reports they submitted. However, the RAD indicated that the documentation referred to by the Applicants identified West Java as the area where most of the problems occurred. The RAD reasonably found that the scarcity of specific documentation on the problems faced by ethnic Chinese and Christians in Surabaya was a credibility concern and that the Applicants had objectively been little affected by the activity of the FPI.

[18] The RAD also concluded that the RPD had provided a balanced and effective review of the general risk faced by the Applicants as Christians of Chinese ethnicity stemming from the

activities of the FPI and that the RPD did not err in its conclusions as to how the country conditions applied to the specific circumstances of the Applicants. The RPD recognized that there were tensions between the various religions in Indonesia, but nonetheless found that there was no evidence that Christians are systematically targeted in Indonesia and that the Applicants had suffered any physical violence in the past despite these tensions having sometimes degenerated into violent attacks against churches. The RPD concluded that the Applicants had not established, in their personal circumstances, a serious possibility of persecution on the ground of their religion.

[19] Although the RAD made a finding regarding the absence of evidence of FPI activities in Surabaya that is not supported by the record, I find that its other conclusions are. Keeping in mind that the RAD's decision must be reviewed as an organic whole, I find that when viewed as a whole, the decision is reasonable as it falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir* at para 47).



**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed and no question of general importance is certified.

"Sylvie E. Roussel"

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Judge

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

**DOCKET:** IMM-2333-16

**STYLE OF CAUSE:** LIANA WAHJUDI, DAVY TRISURJANA LISTIANTO,  
BENJAMIN NICHOLAS KEEFE, VINCE DAVE CASEY  
v THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** NOVEMBER 9, 2016

**JUDGMENT AND REASONS:** ROUSSEL J.

**DATED:** MARCH 15, 2017

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