

Federal Court



Cour fédérale

Date: 20170428

Docket: IMM-4126-16

Citation: 2017 FC 425

Ottawa, Ontario, April 28, 2017

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

XINYU SUN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Background

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [Act or IRPA], of a Refugee Protection Division's [RPD, Board] August 15, 2016 negative decision [Decision], which found that the Applicant is not a refugee nor a person in need of protection under sections 96 and 97 of the Act on credibility grounds. For the reasons explained below, I am dismissing this judicial review.

[2] The Applicant is a citizen of China.

[3] In August 2013, the Applicant says her friend died in an automobile accident, which left her anxious and despondent. Another friend thereafter introduced to her to the Church of Almighty God [Church], an underground and illegal denomination in China, which she started attending in September 2013.

[4] In 2014, the Applicant claims that her parents urged her to leave China to be able to practice her religion freely, and hired a smuggler to prepare a Canadian student visa application, which was refused. A second visa application was accepted, allegedly also submitted by the smuggler. Although it was open to the Applicant to leave China at the time she received her Canadian visa, she opted to remain to complete her school year as a teacher.

[5] In June 2015, the Applicant claims members of the Church were arrested, and fearing her own safety at the hands of Chinese authorities, she went into hiding. On August 27, 2015 she fled China with the help of her smuggler, and came to Canada.

[6] Two months after arriving in Canada, the Applicant joined a branch of the Church in the Greater Toronto Area. In December 2015, she says she met with an immigration consultant, at which time she learned that she could claim refugee protection in Canada. She filed her claim in 2016, ten months after her arrival in Canada.

[7] The RPD rejected the claim based on a number of negative credibility findings, namely:

- i. the Applicant's unsatisfactory answers as to why she joined the Church, given the high risks in China;
- ii. the unclear authors of the visa applications and the Applicant's responses in that regard;
- iii. the impact on subjective fear of persecution resulting from delays in:
 - a) leaving China,
 - b) finding a Church branch in Toronto, and
 - c) seeking refugee protection in Canada, and
- iv. the lack of genuineness of two letters from Church members in Canada.

[8] In light of the negative credibility findings made against the Applicant, the RPD, noting the high rate of forgery in China, gave little weight to certain Chinese documents, including a summons of arrest. The Board concluded that the application was unfounded.

II. Issues and Standard of Review

[9] The only issue is whether the credibility findings made the by the RPD were reasonable. The parties agree, as do I, that the applicable standard of review is reasonableness (*Diaz v Canada (Citizenship and Immigration)*, 2016 FC 1343 at para 10 [*Diaz*]).

III. Analysis

[10] As a preliminary observation and contrary to the Applicant's submissions, I note that the Board in this case did not lose sight of the presumption of the Applicant's truthfulness. That

presumption was explicitly recognized by the RPD, noting that it could be refuted. I will now turn to the Applicant's credibility arguments.

[11] Regarding the Church and the Applicant's lack of knowledge of its tenets, the Applicant argues that the RPD's findings were unreasonable because her Basis of Claim explains that she joined the Church in light of her friend's death, which provided a cogent explanation. However, the RPD found the Applicant's answers regarding her motivation for joining and her knowledge of the Church, provided in both her written and oral testimony, to be vague (containing 'generalities'). After a review of the evidence on the record, including the oral and written testimony, I conclude that this finding was reasonable.

[12] Furthermore, counsel conceded that the Applicant provided inconsistent answers to the Board on the issue of her knowledge of a Church branch in Toronto. This was certainly another reasonable credibility finding of the Board.

[13] With respect to the issue of subjective fear, the Applicant says the Board's findings regarding delays (in leaving China, joining a Church branch in Canada, and claiming refugee status) were all unreasonable. Taken together, I find that the Board's observations regarding subjective fear were reasonable: it is trite that one who fears for their life can reasonably be expected to leave their country of origin and claim status at the first opportunity, and the Court has been consistent in this regard (*Chechkaliuk v Canada (Citizenship and Immigration)*, 2016 FC 1415 at para 13).

[14] Finally, the Applicant challenges two of the RPD's findings on the documentary evidence.

[15] First, the Applicant challenges findings regarding two letters authored by churchgoers, which purport to confirm the Applicant's involvement in the Church here in Canada. The Applicant contends that the RPD's assessment of the letters was unreasonable because they have all the hallmarks of an authentic document, including letterhead, seal and signature. In my view, the Applicant's reliance on *Paxi v Canada (Citizenship and Immigration)*, 2017 FC 905 [*Paxi*] is of no assistance to her position. Unlike *Paxi*, the Board in this case did not discount the letters because they were not authentic. Instead, the Board went further and engaged with the contents of the letters, noting that they were both very brief, undetailed, and nearly identical. The letters state that their authors and the Applicant have spread the Gospel. When asked how they had spread the Gospel, the Applicant responded that she did not know what the authors of the letters meant. The RPD noted that the authors of the letters were not present to answer questions. Given the foregoing, the RPD's analysis is entirely defensible and the little weight given to the letters is accordingly reasonable.

[16] Second, the Applicant challenges the RPD's assessment of certain documents emanating from China, and most importantly (as emphasized during the hearing), the failure to specifically address a summons issued to the Applicant. Noting the high rate of forgery in China and the negative credibility findings made against the Applicant, the RPD attributed little weight to these documents. The Applicant contends that this line of reasoning is unreasonable because the RPD cannot simply rely on the Applicant's lack of credibility and the knowledge that there is a high

rate of forgery in China to discount documentary evidence, based on *Jian v Canada (Citizenship and Immigration)*, 2014 FC 180 at paras 15-17 and *Ren v Canada (Citizenship and Immigration)*, 2015 FC 1402 at para 27.

[17] However, credibility findings can and often do impact on the weight given to accompanying documentary evidence: *Wang v Canada (Citizenship and Immigration)*, 2016 FC 972 at para 13; *Huang v Canada (Citizenship and Immigration)*, 2015 FC 1250 at paras 14-15.; Indeed, recently, Justice Strickland, in *Diaz* at para 15, reviewed the applicable case law, and held the following:

The RPD also did not disregard the corroborating personal documentary evidence without reasons. Rather, the RPD made explicit reference to that evidence and explained that because it had found the Applicants' evidence to lack credibility, it considered the documentary evidence to either be fraudulent or to have little probative value. This approach was open to the RPD. The Applicants were found not to be credible on central aspects of their claim [...] it was open to the RPD to ascribe no or little weight to the supporting documentary evidence in that circumstance. As stated in *Xu*, it is reasonable to conclude that if an applicant has fabricated his claim then the document that supported the claim is also a fabrication (at para 4). Similarly, as stated by Justice Annis in *Jia*:

[19] Findings of credibility lie at the heart of a Board's expertise in determining the possibility of testimony and drawing inferences from the evidence. It is well-established that an applicant's overall credibility may affect the weight given to the documentary evidence (*Granada v Canada (Citizenship and Immigration)*, 2004 FC 1766 (CanLII) at para 13; *Hamid v Canada (Employment and Immigration)*, [1995] FCJ No 1293 (QL) (TD) at para 21; *Huang v Canada (Citizenship and Immigration)*, 2011 FC 288 (CanLII) at para 21).

[emphasis added]

[18] Likewise, in this case, given the credibility findings on central aspects resulting in a determination that the claim was 'unfounded' - findings which were reasonable for the reasons set out above - it was entirely open to the RPD to place little weight on the Applicant's documentary evidence, given the additional documentary evidence before it relating to the prevalence of fraud: these elements, taken as a whole, were fatal to the Applicant.

IV. Conclusion

[19] In light of the above, this application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. Counsel presented no questions for certification, nor do any arise.
3. No costs will be ordered.

"Alan S. Diner"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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