

Federal Court



Cour fédérale

Date: 20170622

Docket: IMM-4829-16

Citation: 2017 FC 615

Ottawa, Ontario, June 22, 2017

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

YUANYUAN ZHU

Applicant

and

**CANADA (MINISTER OF CITIZENSHIP AND
IMMIGRATION)**

Respondent

JUDGMENT AND REASONS

[1] Yuanyuan Zhu applies for judicial review of a Refugee Appeal Division decision [RAD] dated November 2, 2016, which denied her claim for refugee protection. The RAD found that Ms. Zhu was not a genuine practitioner of the Church of the Almighty God and that her story of fleeing to Canada lacked credibility. For the reasons that follow, I find the RAD's decision to be reasonable and dismiss the application for judicial review.

I. Background

[2] Yuanyuan Zhu is a citizen of the People's Republic of China. Her story is that in December of 2014, she was introduced to the Church of the Almighty God by a friend, Tao Tao. Tao Tao taught her how to pray to God and, in March 2015, Ms. Zhu began to attend Tao Tao's home church services.

[3] On September 27, 2015, the church was raided by the Chinese Public Security Bureau [PSB]. Ms. Zhu fled and went into hiding at a relative's home. On December 8, 2015, Ms. Zhu's parents informed her that the PSB came to her home with a summons [PSB Summons]. As a result, Ms. Zhu hired a smuggler and fled to Canada in January, 2016. In February, Tao Tao was arrested.

[4] On July 15, 2016, the Refugee Protection Division [RPD] found that Ms. Zhu was neither a refugee nor a person in need of protection. The RPD found the determinative issues were Ms. Zhu's credibility as a genuine practitioner of the Church of the Almighty God and the credibility of her escape from China.

[5] Ms. Zhu appealed the negative RPD decision to the RAD, which conducted an appeal on the record with no new evidence presented for consideration. Ms. Zhu's refugee claim was rejected by the RAD on November 2, 2016. The RAD found that Ms. Zhu was not a genuine practitioner of the Church of the Almighty God and that her story of fleeing to Canada lacked credibility.

A. *The RPD Decision*

[6] The RPD found that Ms. Zhu had several inconsistencies in her testimony and that she lacked even basic knowledge of her faith. She had not read any materials published by her church, including the main text, and did not know any of its hymns. Ms. Zhu also neglected to include that her mother had a stroke and her subsequent recovery in the basis of claim as the primary motivation for joining the church. The RPD made negative credibility findings based on these inconsistencies and omissions.

[7] Moreover, the RPD questioned Ms. Zhu's ability to leave China on her own passport when she was allegedly wanted by PSB authorities. She testified that she gave her passport to officials at Shanghai airport as confirmed by an exit stamp. As a result, the RPD found that Ms. Zhu was not wanted by the PSB, on a balance of probabilities, as she would not have been allowed to use her own passport to leave the country.

[8] Finally, the RPD considered Ms. Zhu's *sur place* claim, as she attended the Church of Almighty God since arriving in Canada. A letter was written in support of Ms. Zhu's *sur place* claim but was not notarized, nor was the author presented as a witness. The RPD concluded that Ms. Zhu's attendance at the Church in Canada would not have come to the attention of Chinese authorities and her *sur place* claim must fail. Given their findings, the RPD determined that Ms. Zhu was neither a convention refugee nor a person in need of protection and rejected her claim.

B. *The RAD Decision*

[9] The RAD concluded that the RPD's negative credibility findings were made without error. Ms. Zhu had failed to demonstrate that she is a genuine practitioner of the Almighty God faith. The RAD noted that Ms. Zhu's level of education, combined with the length of her alleged practice, would enable her to answer the most basic of questions about her faith, which she failed to do.

[10] The RAD further noted that the Chinese government operates a national computer network known as the Golden Shield Project. The Golden Shield incorporates extensive tracking and control mechanisms, including facial recognition surveillance technology and access to information about criminal fugitives by the authorities who are at exit and entry points in international airports. Therefore, the RAD agreed that Ms. Zhu's story of being wanted by the PSB and evading all security at Shanghai international airport lacked credibility. When she was asked for details about how her smuggler helped her navigate the airport she alternately said that he would not tell her how he was facilitating her exit but then stated that he bribed customs. The RAD acknowledged that it is possible to bribe one official, but concluded that Ms. Zhu had failed to convince the RPD or the RAD that her smuggler had successfully navigated all of the checks required at an international airport. The RAD observed that her evidence was vague and lacking in detail, which ultimately undermined her credibility.

[11] The RAD examined Ms. Zhu's corroborating documents, finding them of little help to her allegations. In reviewing the PSB Summons and the Notice of Dismissal from her employer,

the RAD noted a complete lack of security features. The RPD had dismissed these documents based on Ms. Zhu's ability to exit China on her own passport and her lack of knowledge of the Almighty God faith. The RAD conducted its own review of these documents finding that the PSB Summons was inconsistent with Ms. Zhu's allegations, because if her allegations were true, the PSB would have instead been required to use a coercive summons and arrest warrant. Combined with her other negative credibility findings, the RAD concluded that Ms. Zhu is not wanted by the PSB.

[12] Finally, the RAD assessed Ms. Zhu's *sur place* claim. It imported the findings of the RPD on this issue, finding them without error. Furthermore, upon review of the audio recording, the RAD found insufficient evidence that the Chinese authorities would be aware of Ms. Zhu's religious activities in Canada. It therefore dismissed Ms. Zhu's appeal.

II. Issues

- A. Did the RAD make unreasonable credibility findings?
- B. Was the finding regarding the *sur place* claim unreasonable?

III. Standard of Review

[13] The standard of review with regards to the RAD decision is reasonableness. Reasonableness requires that the decision exhibit justification, transparency and intelligibility within the decision making process and must be within a range of possible, acceptable outcomes, defensible in fact and law (*Dunsmuir v New Brunswick*, 2008 SCC 9; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12).

IV. Analysis

[14] Ms. Zhu argues that her exit from China was the determinative issue before the RAD and that its conclusions were speculative, misleading, and internally inconsistent. According to Ms. Zhu, the RAD failed to appreciate that the purpose of hiring a smuggler was to accomplish what she could not on her own; namely, to circumvent airport security. The RAD's conclusion is therefore incompatible with the RPD's determination that there is systematic corruption in China and airport officials can be bribed.

[15] Ms. Zhu further states that the RAD conducted an unreasonable and misleading review of Federal Court jurisprudence. It erroneously concluded that the facts relied upon in *Sun v Canada (Minister of Citizenship and Immigration)*, 2015 FC 387, and *Ren v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1402, were now outdated. Regardless of the dates between cases, the same legal principles apply between those cases and this one. Namely, that it is impermissibly speculative to assume that a claimant could not exit China using their own passport with the assistance of a smuggler.

[16] Ms. Zhu submits that the RAD failed to consider the recent decision in *Yang v Canada (Minister of Citizenship and Immigration)*, 2016 FC 543 [Yang], which included an updated National Documentation Package. This omission indicates that the RAD chose not to consider case law that would contradict its own conclusions. In *Yang*, above, the Court found it unreasonable that the applicant's refugee claim was rejected because of a negative credibility determination, based on the fact that the applicant was smuggled out of China on their own

passport. According to Ms. Zhu, the RAD ignored this undeniably relevant decision. Ms. Zhu asserts that, since the RAD decision, a Federal Court decision has been rendered which further supports her position (*Yao v Canada*, 2016 FC 927 [*Yao*]).

[17] Ms. Zhu also argues that the RAD unreasonably rejected the PSB Summons issued against her and that the RAD speculated that a coercive summons or arrest warrant should have been issued without any evidentiary basis. The RAD further failed to consider that, if a warrant had been issued, Ms. Zhu might not be aware of its existence. According to Ms. Zhu, the existence of an arrest warrant does not necessarily mean that she or her family members would have been notified about it. The provisions of China's *Criminal Procedure Law*, cited by the RAD, do not support their conclusion that a coercive summons or arrest warrant had to be issued against Ms. Zhu. In fact, public security summons – such as that issued against Ms. Zhu – are specifically contemplated by China's *Public Security Administrative Punishments Law*, making coercive summons a discretionary choice. Therefore, Ms. Zhu submits that the RAD's rejection of the PSB Summons was not supported by the evidence.

[18] Additionally, Ms. Zhu points out that the RAD failed to conduct its own assessment of the Notice of Dismissal from her work and the Notice of Arrest for her friend, Tao Tao. According to her, these documents were critical, clearly relevant to the issue before the RAD, and contradictory of the RAD's findings. It was therefore unreasonable for the RAD to omit this evidence.

[19] Finally, Ms. Zhu argues that the RAD's assessment of her *sur place* claim was tainted by its other negative credibility findings. Since it had already determined that she was not credible, it unreasonably disregarded her claim without due consideration.

[20] It is surprising that Ms. Zhu does not take issue with the determinative issue for the RAD. Specifically, Ms. Zhu does not challenge the RAD's conclusion that she is not a genuine practitioner of the Church of the Almighty God. Unchallenged credibility findings must be presumed to be true (*Liu v Canada (Citizenship and Immigration)*, 2015 FC 207 at paras 28-30). This unchallenged finding was dispositive of the claim. If she is not a member of the Church of the Almighty God, there is no reason for the Chinese authorities to be seeking her, and she would not have to avoid detection at the border.

[21] As this finding was not disputed, I find that the RAD's conclusion is reasonable and the RAD's credibility finding on this point will withstand judicial review.

[22] Ms. Zhu relies on jurisprudence to challenge the RAD's analysis of her claims of exiting China. However, case law does not constitute evidence which is what was lacking. It is not for this Court to substitute its own decision or to reweigh the evidence which was before the RAD. Moreover, Ms. Zhu's reliance on jurisprudence involving different factual findings does not render the RAD's analysis of her facts unreasonable. Her reliance on *Yao*, above, does not support her position since it is based on whether a person could obtain and use a fraudulent passport to leave China, and not about leaving on a genuine passport

[23] Further, not every error committed by a board constitutes a reviewable error. An error must go to the heart of the decision (*Castillo Mendoza v Canada (Citizenship and Immigration)*, 2010 FC 648 at para 24). The RAD reasonably observed that Ms. Zhu's documentary evidence lacked security features. It also reasonably concluded that the PSB would have resorted to a coercive summons in a situation like Ms. Zhu described. Since there was no evidence of a coercive summons, Ms. Zhu's credibility was further undermined. While the RAD did not discuss the alleged arrest of Tao Tao, who allegedly introduced Ms. Zhu to the Church of the Almighty God, this cannot be enough to make the RAD's decision unreasonable. Given that the RAD found Ms. Zhu was not a member of the Church of the Almighty God, it is reasonable that the RAD did not see the need to discuss or make findings in relation to Tao Tao.

[24] The same logic applies to Ms. Zhu's microscopic dissection of the difference between airport security and airline personal, and her arguments that the RAD was wrong about there being two or four layers of security. However, even if the RAD made an error regarding the airport security features at Shanghai airport, it would not constitute a reviewable error and would not taint the RAD's credibility assessment, as the RAD held that because she was not a member of the Church of the Almighty God the Chinese authorities were not looking for her.

[25] Further, it is perfectly acceptable for credibility concerns relating to the original authenticity of a claim to impact an applicant's *sur place* claim (*Jiang v Canada (Citizenship and Immigration)*, 2012 FC 1067 at paras 28-30). Since Ms. Zhu presented no evidence that her risk profile would attract the attention of the Chinese authorities, she failed to establish a *sur place*

claim. Without any reliable evidence that the Chinese authorities are aware of her activities her claim must fail.

[26] Based on all of the above, I find that the RAD's decision was reasonable and I dismiss the application.

[27] No question was presented for certification and none arose.

JUDGMENT in file IMM-4829-16

THIS COURT'S JUDGMENT is that:

1. This application is dismissed.
2. No question is certified.

"Glennys L. McVeigh"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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