

Federal Court



Cour fédérale

Date: 20171205

Docket: IMM-1801-17

Citation: 2017 FC 1089

Toronto, Ontario, December 5, 2017

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

**WANLING HE
WEIXUAN LIU
HONGLI LIU**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants, a couple from China and their minor son, claim refugee protection in Canada as Falun Gong practitioners because they have a subjective and objective fear that, should they be required to return to China, they will suffer more than a mere possibility of persecution under s.96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. Presently

under review is the decision of the Refugee Appeal Division (RAD), dated March 28, 2017, in which the Applicants' claim for protection was dismissed on the basis that they are not credible.

[2] The Applicants stated before the Refugee Protection Division (RPD) that they fear persecution in China because the Public Security Bureau (PSB) learned that they are Falun Gong practitioners. As a result of this fear, the Applicants hired a smuggler and left China with their own passports.

[3] The RAD noted the RPD reached the following conclusion about the Applicants' exit from China:

The RPD drew an adverse credibility finding based on the Appellants' ability to travel out of China using a genuine passport in their own names, given that they have alleged that the PSB were actively pursuing them to arrest them for being Falun Gong practitioners. The RPD found that, despite their allegations that they used a smuggler, it was not plausible that they were able to bypass all of the security measures in place.

[Decision at para 11, p.10]

[4] The RAD agreed with the RPD that the Applicants could not have left China using their own passports given the allegations that the PSB wanted to arrest them. The RAD made the following findings:

The documentary evidence reveals that the Chinese government has a national computer network known as the *Golden Shield Project*, and the PSB has access to a national policing database, which includes information about criminal fugitives and information on passports and exit and entry. The *Golden Shield* incorporated extensive tracking and control mechanisms including facial recognition surveillance technology.

The RAD also notes, from its own review and assessment of the evidence, that the Exit and Entry Administration Law of China, which came into force on 1 July 2013, states that Chinese citizens who exit or enter China shall submit their exit/entry documents such as passports or other travel documents to the exit/entry border inspection authorities for examination, go through the prescribed formalities, and may exit or enter upon examination and approval. According to the evidence in the National Documentation Package (NDP) in the record, a Canadian Embassy official states that upon departure, a person may be requested to produce their passport four times in the airport.

[Decision at paras 15-16, p.11]

[5] The RAD pointed to documentary evidence that Chinese citizens are not permitted to exit China if they are suspects or defendants in a criminal case, they have been convicted of crimes, or they are wanted by the authorities. The RAD noted that the Golden Shield system has also been used to track down Falun Gong practitioners. The RAD recognized that the Applicants paid a smuggler to help them exit China, but found it was nevertheless “highly unlikely” that they could have bypassed all of the security controls in place. The RAD then made the following speculative finding:

The RAD finds that, in light of the Appellants’ allegation that they were wanted by Chinese authorities and in light of the evidence of the vigorous pursuit of the PSB, it is reasonable to expect that the local authorities would have entered their information into the database to further their efforts to apprehend them.

[Emphasis added]

[Decision at para 36, p.18]

[6] The RAD also found that:

After its own review and assessment of the evidence, the RAD agrees with the RPD’s findings and does not find it credible or plausible that the Appellants were able to leave China using their

genuine passports. The RAD finds that the Appellants' ability to exit China undermines their allegation that they were wanted by the PSB.

[Emphasis added]

[Decision at para 38, pp.18-19]

[7] The law with respect to the making of an implausibility finding is stated by Justice Muldoon in *Valtchev v Canada (MCI)*, 2001 FCT 776 at paragraphs 6 and 7:

The tribunal adverts to the principle from *Maldonado v. M.E.I.*, [1980] 2 F.C 302 (C.A.) at 305, that when a refugee claimant swears to the truth of certain allegations, a presumption is created that those allegations are true unless there are reasons to doubt their truthfulness. But the tribunal does not apply the *Maldonado* principle to this applicant, and repeatedly disregards his testimony, holding that much of it appears to it to be implausible. Additionally, the tribunal often substitutes its own version of events without evidence to support its conclusions.

A tribunal may make adverse findings of credibility based on the implausibility of an applicant's story provided the inferences drawn can be reasonably said to exist. However, plausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant. A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu.

[see L. Waldman, *Immigration Law and Practice* (Markham, ON: Butterworths, 1992) at 8.22]

[Emphasis added]

[8] An inference is a conclusion reached on the basis of evidence and reasoning. What might reasonably be said to be such a conclusion in a given situation is not established by speculation; it is established on a balance of probabilities on cogent and verifiable evidence.

[9] For a person who is Falun Gong and who has been persecuted by the PSB or police, two possible inferences arise from that person not being stopped when transiting security measures at an airport in China having used their own genuine passport: the person is lying that she or he is a Falun Gong practitioner; or no record exists on the Golden Shield system that negatively relates to him or her. Accordingly, it is not possible to assume only that the former of the two possible conclusions is true.

[10] In the present case there is no evidence to support a finding that a record was made as a result of PSB contact with the Applicants, no evidence to support a finding that such a record was placed on the Golden Shield system, or that any record exists on the Golden Shield system that negatively relates to the Applicants.

[11] Since the RAD had no verifiable evidentiary base to reach the fundamentally important implausibility finding expressed in paragraph 6 above, I find that the decision under review is unreasonable.

JUDGMENT

THIS COURT'S JUDGMENT is that the decision under review is set aside and the matter is referred back for redetermination by a different decision-maker.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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