

Federal Court



Cour fédérale

**Date: 20180306**

**Docket: IMM-4049-16**

**Citation: 2018 FC 253**

**Ottawa, Ontario, March 6, 2018**

**PRESENT: The Honourable Madam Justice Elliott**

**BETWEEN:**

**RENJUN LIU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] Renjun Liu [the Applicant] seeks judicial review of a decision made by the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada. The RPD found that the Applicant was neither a Convention refugee nor a person in need of protection under sections 96-97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The RPD also found that there was no credible basis for the Applicant's claims, precluding an appeal to the

Refugee Appeal Division [RAD]. The decision was made on the basis that the RPD found no credible evidence to establish the Applicant's identity, and therefore there was no credible evidence on which a positive determination could have been made.

[2] The Applicant asks that the decision be set aside and the matter sent back to the RPD for redetermination by a differently constituted panel. The Applicant argues that based on misunderstandings of the National Documentation Package [NDP], the RPD made serious errors with respect to assessing his credibility and the documents submitted. While the RPD believed certain portions of the Applicant's story contradicted the NDP, the Applicant says this was not actually the case.

[3] The Applicant also argues that the RPD misapplied the no credible basis test. There were documents that were not subject to negative credibility assessments which could have supported a positive determination of the Applicant's identity.

[4] For the reasons that follow, this application is allowed and the matter will be sent back for redetermination by a differently constituted panel.

## II. **Background**

[5] The Applicant is a national of China, who worked as a farmer. He alleges that in October 2014, he and other farmers received expropriation notices whereby the Chinese government intended to expropriate the Applicant's land for well below its fair market value. The Applicant attended at a government office in December 2014 and appealed for fair compensation, but two police officers arrested him and took him to a detention centre, where they threatened to beat him

to death if he went to a government office again. In support of this, the Applicant adduced in evidence a detention certificate stating that he had been detained for slander of government officials from December 10-15, 2014. The Applicant had a heart attack in custody and took six months at home to recover.

[6] In February 2015, the land was actually taken and the Applicant contemplated suicide at the loss of his only source of income. In June 2016, he travelled to a government office in Beijing and held up a banner of protest in the hopes of getting the attention of one of the government workers. He ran away on seeing members of the Public Security Bureau [PSB] approach. He went into hiding at a friend's home, and was informed by his wife that the PSB had left him a summons to appear for questioning on the basis of committing slander against the government.

[7] The Applicant hired a smuggler in July 2015 and gave her his name and date of birth. The smuggler procured for the Applicant a fraudulent Hong Kong passport with a Canadian visa.

[8] On October 23, 2015, the Applicant left China, stopping in Hong Kong and landing in Toronto. The Applicant made an inland refugee claim on December 23, 2015.

### III. **The Applicant's evidence before the RPD**

[9] In support of his claim, the Applicant submitted the following documents:

- a *Hukou* (household registration)
- the detention certificate for the December 2014 detention
- the June 2015 summons

- an appraisal report for the Applicant’s land
- a rural land contract dated December 7, 2000, which gave the Applicant the right to farm the land from 2000 to 2030
- a compensation notice about the expropriation
- a train ticket from ShenYangBei to Beijing, dated June 6, 2015
- a medical report dated December 17, 2012 regarding the Applicant’s injuries
- a notice of land expropriation
- photographs of the Applicant with his injury
- the Applicant’s marriage certificate

[10] In addition, a certified copy of the Applicant’s Resident Identity Card [RIC], which had been seized by the CBSA, was also entered into evidence.

[11] At the hearing, which was held on February 25, 2016, the RPD had concerns with the validity of the RIC. Originally, the RPD was going to either have the original sent by Citizenship and Immigration Canada [CIC] to the RPD or, instead, have the RCMP perform forensic testing. The hearing was adjourned pending this taking place, since at that point the RPD said it was not satisfied as to the Applicant’s identity. The next day the RPD requested the original of the RIC.

[12] On March 2, 2016, CIC sent the RPD either the original or a clearer photocopy - it is not clear from the record. On May 24, 2016, the RPD sent the Applicant’s counsel a letter stating that the RPD was disclosing the new NDP for China dated April 29, 2016, and that the identity documents would not be forwarded for forensic testing. The Applicant was given until June 13, 2016 to either provide additional documents and/or written submissions or to apply for a

resumption of the RPD hearing. The Applicant did not submit any additional material or apply for a resumption of the hearing.

[13] The decision was made on August 29, 2016. The Applicant received the Notice of Decision and written reasons on September 13, 2016. He filed the application for judicial review on September 27, 2016.

IV. **The decision under review**

[14] The RPD found the determinative issues were identity and credibility.

[15] With respect to identity, the RPD noted that the fraudulent passport the Applicant used for travel was not submitted to the panel because it was retained by the smuggler. It confirmed because CIC retained the original RIC, a certified copy was given to the RPD.

[16] An original *Hukou* was tendered at the hearing along with other personal documents that had been sent to the RPD on February 17, 2016, prior to the hearing.

[17] The RPD determined it could not accept the validity of the identity documents. In doing so it reviewed section 106 of the *IRPA* and Rule 11 of the *Refugee Protection Division Rules*, SOR/2012-256 [*RPD Rules*] with respect to the importance of an applicant providing acceptable identity documents or, a reasonable explanation for a lack of such documentation or what steps were taken to obtain them. The RPD also referred to three cases from this Court to the effect that the RPD may consider the authenticity of documents, an expert assessment is not necessarily required if there are significant irregularities on the face of a document, and the authenticity of foreign documents that are purported to have been issued by a competent public official may be

doubted if there is valid reason to suspect their authenticity: *Sertkaya v Canada (Minister of Citizenship and Immigration)*, 2004 FC 734, 131 ACWS (3d) 729; *Kazadi v Canada (Minister of Citizenship and Immigration)*, 2005 FC 292, 148 ACWS (3d) 964; and *Rasheed v Canada (Minister of Citizenship and Immigration)*, 2004 FC 587, 35 Imm LR (3d) 299.

[18] Regarding the RIC, the RPD found that the Applicant's testimony about when he got the RIC lacked credibility, which impugned the credibility of the RIC. The Applicant testified that he got his first RIC in 1981, at the age of 18, and it was valid for ten years until 1991. The Applicant did not obtain another RIC until 2000, when he obtained the RIC put into evidence.

[19] Without a passport, the RPD considered the RIC to be the most important document to prove the identity of Chinese nationals. The RPD noted that it was a uniform document issued to all citizens of China sixteen or older and was required for the facilitation of social services. The Applicant had explained that as a farmer, he did not need an RIC between 1991 and 2000. The RPD did not consider this explanation to be credible, given that the NDP requires Chinese citizens to present official identity documents whenever requested by the PSB. Given the previous lack of an RIC, the RPD drew an adverse inference about the Applicant's identity.

[20] Regarding the passport, the RPD similarly found the Applicant's testimony to contradict the country condition documents. The Applicant testified that when he left China, the only identity document he had with him was the fraudulent Hong Kong passport, with his photo and date of birth but in the name of a "Mr. Fu, Jun". All the other identity documents were sent by the Applicant's wife after he arrived in Canada. The RPD gave no weight to the *Hukou*, since it contains minimal security features and no photograph of the individual or holograms.

[21] The RPD found there were exit-entry controls for all Chinese nationals leaving China and/or entering Hong Kong, and that according to the NDP, an entry-exit permit [EEP] was required for any Chinese resident attempting to enter Hong Kong. Given the computerized entry-exit system, the RPD did not believe that the Applicant would have been able to enter Hong Kong with only a fraudulent Hong Kong passport.

[22] According to the NDP, fraudulent documentation is very easy to obtain in China. The RPD found it had no obligation to send the documents for forensic analysis and that the Applicant's other identity documents had limited probative value since they lacked the safety features of a passport or RIC. The RPD therefore gave them limited weight in establishing the Applicant's identity.

[23] The RPD concluded by finding that there was insufficient reliable and credible evidence to establish the Applicant's identity on the balance of probabilities. As identity must be established before the rest of the claim can be evaluated, the RPD concluded that the Applicant had not met the burden of proof that he was a Convention refugee or person in need of protection.

[24] Moreover, the RPD determined not only that there was insufficient evidence to establish the claim, but that there was no credible or trustworthy evidence on which the claim could have been accepted. Since the Applicant's identity was essential to the other elements of his claim, the RPD determined that there was no evidence on which it could have made a positive finding. There was therefore no credible basis for the claim.

V. **Analysis**

[25] The Applicant argues that the RPD made serious errors with respect to assessing his credibility and the documents submitted, based on misunderstandings of the NDP. While the RPD believed certain portions of the Applicant's story contradicted the NDP, this was not actually the case. The Applicant also argues that the RPD misapplied the no credible basis test as there were documents that were not subject to negative credibility assessments and which could have supported a positive determination of the Applicant's identity. The Applicant asks that the decision be set aside and the matter sent back to the RPD for redetermination by a differently constituted panel.

[26] The RPD made two errors of significance in the analysis of the evidence: the treatment of the Hong Kong passport and the application of the no credible basis test.

[27] The Respondent says that the RPD reasonably questioned the Applicant's explanation that he travelled to Hong Kong solely on a fraudulent passport. Given that China uses computerized entry-exit verification, it was open to the RPD to find that the Applicant would not have been able to proceed through Chinese security with a fraudulent passport.

[28] The fundamental flaw in the reasoning of the RPD with respect to the passport analysis is that the Applicant was not travelling as a resident of China. Using a fraudulent Hong Kong passport, the Applicant was travelling as a resident of Hong Kong. The NDP relied upon by the RPD very clearly states it is applicable to Chinese residents. It does not address what documents a resident of Hong Kong would need to travel from mainland China back to Hong Kong. In that



respect, the conclusion drawn by the RPD is without support of the evidence upon which it said it was relying.

[29] In addition, the RPD analysis of the application of the EEP did not mention that Chinese residents do not need an EEP to enter Hong Kong if they are only transiting through to another destination. The Certified Tribunal Record contains documents of the Applicant in which he indicates that he transited through Hong Kong to Toronto. The Applicant also provided sworn testimony before the RPD that Toronto was his destination.

[30] On the face of the record, the finding that the EEP applied to the Applicant is not transparent or intelligible without more explanation. If he was travelling as a resident of China then the EEP did not apply because he was transiting through Hong Kong. If he was travelling as a resident of Hong Kong then the NDP does not show what documents, if any, were required to return to Hong Kong other than the Hong Kong passport. The RPD decision makes no explicit statement that it does not accept that the Applicant travelled to Canada via Hong Kong. Likewise given the RPD's reliance on factors involving transiting Hong Kong for making its credibility finding on identity it appears that it implicitly accepted the Applicant transited through Hong Kong.

[31] Regarding the no credibility finding, it is only upon finding that all of the evidence capable of supporting the claim lacks credibility that a claimant's appeal rights are to be taken away by a finding of no credible basis. The RPD did not make negative credibility findings against other documents that could have proven identity, such as the *Hukou*. It determined that in light of the low weight given to non-secure documents to confirm identity, they were not enough

to meet the evidentiary threshold of proving the Applicant's identity on the balance of probabilities.

[32] That approach is acceptable when making a finding on whether an applicant failed to establish their identity. However, it does not necessarily support the finding that there was no credible basis for this Applicant's claim. A finding of no credible basis requires that the RPD analyze whether, if the other identity documents were believed, the weight attributed to those documents could establish the Applicant's identity: *Rahaman v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89 at paras 19, 28 and 51, [2002] 3 FC 537. By failing to conduct that analysis, the no credible basis finding made by the RPD is unreasonable.

[33] The RPD negative credibility finding with respect to the passport and EEP was central to its decision. That the other documents received very little weight may be tied to that initial finding or, it may be an independent assessment. Either way, the reasons do not permit the Court to determine whether the outcome falls within the range of possible outcomes that are defensible on the facts and law.

[34] The decision is set aside and the matter returned for redetermination by a different panel.

[35] There is no serious question of general importance in this application that warrants a certified question.

**JUDGMENT IN IMM-4049-16**

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

1. The application is allowed and the matter is returned for redetermination by a differently constituted panel of the Refugee Protection Division of the Immigration and Refugee Board.
2. There is no serious question of general importance for certification.

“E. Susan Elliott”

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Judge

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

**DOCKET:** IMM-4049-16

**STYLE OF CAUSE:** RENJUN LIU v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 4, 2017

**JUDGMENT AND REASONS:** ELLIOTT J.

**DATED:** MARCH 6, 2018

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