Federal Court  Cour fédérale

Date: 20180425

Docket: IMM-5393-16

Citation: 2018 FC 449

Ottawa, Ontario, April 25, 2018

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

QIAN LIU SONG
YI RAN ZHANG

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Case

[1] The Applicants, Qian Liu Song [mother] and her daughter Yi Ran Zhang [daughter], seek judicial review of the decision of Senior Immigration Officer D. Takhar [the Officer], which rejected their application for a pre-removal risk assessment [PRRA] under section 112 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] on October 12, 2016 [Decision].

[2] The Applicants allege that the Officer unreasonably assessed the risks they would face in China as practicing Christians given the crackdown on independent churches in China since their refugee claim was rejected by the Refugee Protection Division [RPD]. They also allege that the Officer improperly failed to provide them with an oral hearing.

[3] The Applicants ask that the decision be quashed and either a positive decision be entered or the matter be remitted to a different officer for redetermination.

II. Background facts

[4] The Applicants are nationals of China who lived in Shanghai. In 2009, the mother joined a house church after being encouraged to do so by a friend. In mid-2010, her daughter also began to attend services at the house church.

[5] The Applicants allege that on June 19, 2011, the Public Security Bureau [PSB] raided a meeting of the house church and they ran out the back door. They went into hiding and subsequently learned that the PSB had been to their home to arrest them. The PSB later returned and left a summons. After that the Applicants hired a smuggler and came to Canada, where they made a refugee claim.

III. The RPD decision

[6] On September 30, 2014, the RPD denied the refugee claims. The panel did not dispute that the Applicants were genuine Christians, specifically Protestants, who attended a house church in China. However, the panel found that the Applicants lacked credibility with regard to

their allegations that the PSB was looking for them because their testimony about the raid was limited and difficult to believe. The Applicants submitted an arrest summons and two hukous to the RPD, all of which were found to be fraudulent. The RPD also found that their testimony about leaving China on their own passports with genuine United States visas was inconsistent with there being an active arrest warrant for them in China.

[7] To determine whether the Applicants would face persecution as members of a Christian house church if they were returned to China, the RPD reviewed the country condition evidence. It found that there was some persecution of Protestant house churches in China but it was not general in nature. The Chinese authorities specifically targeted churches with close links to the West or evangelization, large-scale churches, and individuals in leadership positions within a church. The RPD noted that in Shanghai there was little evidence that small house churches were persecuted.

[8] The RPD concluded that there was not a serious possibility that the Applicants would be persecuted on the basis of membership in a small Protestant house church in Shanghai. A separate claim by the daughter, related to possible forced contraception in China, was also dismissed but it was not made part of the PRRA application.

IV. The PRRA new evidence

[9] The Applicants applied for a PRRA on January 4, 2016, and submitted additional evidence on January 5, 2016.

[10] The January 4 package included brief written submissions as well as updated country condition documents from China. The country condition documents indicated that in 2015 there had been a serious crackdown on churches; a number of churches were closed down on the basis that they illegally displayed crosses. There were also a number of arrests.

[11] The January 5 package included a "Release from Detention Centre" and a "Resident Death Medical Certificate". According to the mother's written statement in the PRRA application, the PSB visited her home several times to harass her husband. On August 28, 2015, they questioned her husband and mother [grandmother] about her whereabouts, searched the husband's pockets and found a phone where there were instant messages from the mother.

[12] As a result, the PSB arrested the husband on the suspicion that he had assisted the Applicants' flight from the country. The grandmother was so traumatized by the arrest that she had a cerebral hemorrhage and died on September 9, 2015. The husband was released on September 11, 2015, and ordered to cooperate and try to get the Applicants to return to China.

[13] The Applicants also submitted an updated letter from the Living Stone Assembly church in Scarborough, Ontario, attesting to their ongoing attendance at the church since arriving in Canada in 2012.

V. The PRRA decision

[14] The Officer reviewed the 2015 arrest of the mother's husband but found that it was unclear why he was arrested four and half years after she had left China for Canada. The arrest

warrant stated it was for “conceal and assist criminal to escape” which the Officer found was insufficient to connect it to a forward-looking fear for the Applicants. The release certificate was examined but there was no information as to how it was received and its origins could not be confirmed.

[15] The Officer accepted that the grandmother had died but found that there was insufficient evidence to corroborate the claim that her death was related to the arrest of the husband.

[16] Regarding the letter from the Living Stone Assembly church, the Officer found that there was insufficient evidence to indicate that the Chinese authorities were aware of the Applicants’ participation in church activities in Canada or that these activities were likely to be brought to their attention.

[17] After reviewing the country documentation for China, the Officer accepted that there was a campaign against Christians which targeted house churches and government churches. The Officer also noted the evidence showed “an increase in government sanction [*sic*] persecution against religious practitioners and human rights lawyers”. From that, the Officer concluded that there was insufficient evidence to indicate the Applicants would be subject to persecution as they did not fit the profile, nor would they be perceived to fit the profile, of a religious practitioner or human rights lawyer.

[18] The Officer also found that the documents showed that religious communities were increasingly using the rule of law and administrative proceedings to defend their rights and using social media to expose abuse and denial of religious freedom.

[19] Specifically with respect to house churches, the Officer found that the evidence indicated there were various factors, which are listed in the Decision, that influence how those churches and their members are treated by the government.

[20] Referring to the 2014 China Aid report submitted by the Applicants, the Officer noted the statement that the Chinese government's persecution of house churches was most severe in the North, Northwest, South, and Southwest regions of China. The Officer also cited the 2016 UK Country Information and Guidance report on Christians in China [2016 UK Report] in which it is stated that:

> In general the treatment faced by Christians in China, including those from unregistered churches, is unlikely to amount to persecution. Caselaw from early 2014 established that in general, the risk of persecution for Christians expressing our in their faith in China is very low. There may be a risk of persecution or serious harm for dissident bishops or certain individual Christians who choose to worship in unregistered churches and to conduct themselves in such a way as to attract the local authorities' attention to them or their political, social or cultural views.

[21] The Officer acknowledged that some Christians in unregistered house churches can face serious mistreatment but observed that not all such persons face risk that would qualify under either s 96 or s 97 of the *IRPA*.

[22] Ultimately, the Officer found there was insufficient evidence to indicate the PSB would have an interest in the Applicants if they were to return to China.

VI. Issues and standard of review

[23] The Applicants have raised two issues:

1. Did the Officer err in assessing the risk faced by the Applicants;

2. Did the Officer err in failing to determine that an oral hearing was required?

[24] The Officer's assessment of the risk faced by the Applicants involves findings of fact and mixed fact and law where the legal issue cannot be readily separated. It is therefore reviewable on a standard of reasonableness: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 53, [2008] 1 SCR 190 [*Dunsmuir*].

[25] A decision is reasonable if the decision-making process is justified, transparent, and intelligible, resulting in a determination that falls within the range of possible, acceptable outcomes which are defensible on the facts and law: *Dunsmuir* at para 47.

[26] If the reasons, when read as a whole, "allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met": *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708.

[27] The standard of review to be applied to the question of whether a PRRA officer ought to have held an oral hearing follows two separate paths in this Court. Some members of the Court find the standard to be correctness with no deference to the officer because it is a question of procedural fairness. Other members of the Court find the applicable standard of review to be reasonableness as the determination of whether to hold an oral hearing is a question of mixed fact and law. Mr. Justice Boswell has outlined this divergence in *Zmari v Canada (Citizenship and Immigration)*, 2016 FC 132 at paras 11-12, 39 Imm LR (4th) 92.

[28] As explained later in these reasons, I do not find it necessary to make a determination one way or the other regarding the standard of review on this point. In my view, the Officer's decision not to hold an oral hearing was both reasonable and correct.

VII. Analysis

A. *Did the Officer err in assessing the risk faced by the Applicants?*

(1) The submissions of the parties

[29] The primary contention by the Applicants is that the Officer erred in concluding that the documentary evidence did not reflect a sufficient level of risk to the Applicants. The Applicants contend that the country conditions in China deteriorated following the RPD hearing to an extent that would have affected the RPD decision. The Officer ought to have recognized this change and found that the Applicants would be subject to religious persecution if returned to China.

[30] The Applicants specifically submit that the Officer wrongly found that they do not fit the profile of people who are subjected to government-sanctioned persecution based on religion. The

Officer improperly restricted that profile to “religious practitioners and human rights lawyers” and then arbitrarily defined the term “religious practitioners” to be someone who has undergone training and whose profession is within the Church. The Applicants submit that the 2015 and 2014 China Aid Reports use the terms “practitioner” and “adherent” interchangeably, which clearly shows that the description of those persecuted is not limited to church professionals.

[31] The Applicants note that the Officer referred to the fact that religious communities were using the rule of law and social media to defend themselves and raise awareness of injustices. They say that, rather than demonstrating that these communities are safe, this evidence demonstrates their persecution.

[32] The Applicants also say that, in finding that the risk of persecution was low, the Officer preferred out of date country condition documents from 2014 to more recent documents. The Applicants add that the test is not whether all Christians would face persecution but rather whether the Applicants personally would face persecution.

[33] Finally, the Applicants submit that the letter from the Living Stone Assembly shows that, whether or not authorities are currently looking for them in China, the issue is that they will be unable to practice their religion freely and openly if they return to China.

[34] The Respondent submits that the Officer considered the country condition documentation appropriately. In particular, the Officer applied the various factors set out in the documents as indicators of whether church members are likely to be subject to mistreatment. The factors

considered include the profile of the Applicants' church, its location, the size of its congregation, whether there was involvement in trans-jurisdictional activity or political or religious activism, whether there was foreign contact or involvement, and the attitudes and preferences of local officials.

[35] The Respondent also points out that the Applicants put forward substantially the same allegation of risk to the Officer as had already been determined by the RPD. The Officer specifically noted that the RPD found the Applicants are not wanted by the PSB and that small Protestant house or family churches functioned freely and openly in Shanghai, where the Applicants are from. The new evidence submitted by the Applicants to persuade the Officer that the PSB was looking for them was insufficient.

[36] The question for the Officer was not whether the limits on the ability of the Applicants to practice their religion freely would be legally acceptable in Canada. The question to be determined was whether the Applicants face more than a mere possibility of persecution as result of their religious beliefs, activities, or practices.

(2) The Officer's risk assessment was reasonable

[37] The Applicants were required to provide sufficient credible evidence to the Officer to show that there was a new personalized, forward-looking risk pursuant to either s 96 or s 97 of the *IRPA* if they are returned to China. They say the newer country condition documents show that such a risk exists.

[38] The review of country condition documents to determine the nature and scope of any risk to the Applicants is within the specialized expertise of a PRRA Officer. The Officer's analysis is entitled to considerable deference. Unless the Officer either fails to consider relevant factors or relies on irrelevant ones, the weighing of the evidence by the Officer will not normally be set aside: *Raza v Canada (Citizenship and Immigration)*, 2006 FC 1385 at para 10; 58 Admin LR (4th) 283, aff'd 2007 FCA 385, 370 NR 344.

[39] The Applicants claimed that persecution of Christians in China had become increasingly severe. To support their claim the Applicants submitted the 2014 annual report by China Aid and a December 11, 2015, article by the same group entitled "China works to eradicate house churches, persecution increases".

[40] It is the 2014 China Aid annual report which points out that a large number of religious practitioners use the rule of law to defend their right to religious freedom. The report indicates that throughout China citizens filed administrative lawsuits, many of which had successful outcomes. Given that, the Applicants' argument that use of the rule of law proves persecution is without merit.

[41] The Applicants also submitted an article from Christian Today dated August 29, 2015, entitled "Christian persecution in China mounts with an arrest of activists opposing Cross removal", referring to the arrest of nine Christians who were protesting the government's campaign to remove crosses on church buildings.

[42] The Officer relied on the Response to Information Request [RIR] for China which is dated at approximately the same time as the 2014 China Aid annual report. The RIR included information from the president of China Aid that the treatment of unregistered religious groups by local authorities was varied with the majority of unregistered churches being tolerated by the government.

[43] What the China Aid report shows is that there were several campaigns undertaken by the government of China which related to Christian religious practitioners. It appears that the focus of the crackdown was publicly visible displays of Christianity and higher level officials within the Church. One such campaign was called “Three Rectification’s and One Demolition”. It did not target people. The target was buildings that lacked an appropriate permit or that publicly displayed crosses. The campaign took place in the province adjacent to where Shanghai is located. People taken into custody as part of this campaign were either church officials or members who protested the demolition.

[44] There is also reference to a crackdown on cult activities, which targeted members of fourteen cults that have been declared illegal by the Ministry of Public Safety in 2000 and 2005. The focus appears to have been heretical Christian faith communities such as the Shouters, the Church of the Almighty God, and the Three Teams of Servants Church.

[45] There is no indication that ordinary Protestant church worship in an unregistered house church is treated the same way as the cult churches or the church buildings that display crosses. The RIR does say that in some provinces local officials cannot distinguish between Christian

groups and they may indiscriminately target house churches as a result, but the areas where this was reported did not include Shanghai.

[46] A review of the record before the Officer shows there was sufficient information from credible sources upon which the Officer could reasonably find the Applicants would not be at risk practising their faith as Christians in China. For instance:

- examples of persecution in the China Aid report involve outdoor, public, or large church gatherings rather than small house church gatherings;
- the 2016 UK Report found that in March 2014 the risk of persecution for Christians expressing and living their faith in China was very low and statistically virtually negligible;
- the same report concluded that, given the wide variation of response by local officials to unregistered churches, individual Christians who were at risk in their local area would be able to relocate safely elsewhere in China.

[47] In arriving at the determination that the Applicants would not be at risk, the Officer consulted the more recent, independent documents (specifically the RIR and the UK Report). The Officer's preference for these documents is reasonable.

[48] In considering whether a small house church in Shanghai was likely to be targeted, the Officer also considered that the house churches which had been persecuted were located in the North, Northwest, South, and Southwest regions of China. Shanghai is in the East. That is a reasonable factor for the Officer to have weighed.

[49] Finally, it is not clear which document the Applicants consider "out of date" and the only 2014 document that appears to have been before the Officer was one which the Applicants submitted. The Officer cannot be faulted for addressing a document submitted by the Applicants.

[50] In my view, the Officer conducted a reasonable and thorough review of the evidence and submissions put forward by the Applicants. In looking at the record as a whole, including the decision by the RPD, the Officer could and did reasonably determine that the Applicants face no more than a mere possibility of persecution and would not likely be at risk of cruel and unusual treatment or punishment if returned to Shanghai.

[51] While the Applicants disagree with the weight given by the Officer to the documents it is not the job of this Court to reweigh that evidence, particularly given the special expertise possessed by the Officer. The Officer considered the evidence put forward by the Applicants but reasonably found that it was not of such significance that it would have allowed the RPD to reach a different conclusion.

B. *Did the Officer err by not holding an oral hearing?*

[52] Whether to hold an oral hearing pursuant to paragraph 113(b) of the *IRPA* is governed by prescribed factors set out in s 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227:

Hearing — prescribed factors	Facteurs pour la tenue d'une audience
167 For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following:	167 Pour l'application de l'alinéa 113b) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise:
(a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out	a) l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une

in sections 96 and 97 of the Act;	question importante en ce qui concerne la crédibilité du demandeur;
(b) whether the evidence is central to the decision with respect to the application for protection; and	b) l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;
(c) whether the evidence, if accepted, would justify allowing the application for protection.	c) la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

[53] All three of these factors must be satisfied to cause the Officer to hold an oral hearing. If any one of the factors is not satisfied there is no requirement to hold a hearing: *Cosgun v Canada (Citizenship and Immigration)*, 2010 FC 400 at para 32, [2010] FCJ No 458.

(1) The detention certificate and death certificate

[54] The Applicants main argument for why an oral hearing should have been held is that the new evidence of the husband's arrest, as shown by the release from detention certificate, and the grandmother's death certificate corroborate their story that the PSB was searching for the Applicants.

[55] The submissions to the PRRA officer were made the day before the two certificates and updated Church letter were submitted. The submissions did not address the new evidence but the letter delivering them stated that they are new evidence of risk and that they relate to the original case before the RPD but the Applicants were unable to obtain the documents before that decision was released.

[56] The mother's PRRA narrative mentions the husband's arrest and grandmother's death as evidence that the PSB has never given up looking for them.

(2) Analysis

[57] The RPD originally found that the PSB was not looking for the Applicants because Applicants' testimony was contradictory and their documents fraudulent.

[58] The two certificates could not have overcome the RPD's negative credibility finding and conclusion that the PSB was not searching for the Applicants. The Officer's finding that the two certificates were insufficient to change the outcome before the RPD was reasonable. At best, if accepted at face value, the new evidence only shows that the husband was arrested and released for aiding an unknown, unnamed "criminal" and that the grandmother died. There is no connection in the documents either to the Applicants personally or to their forward-looking risk.

[59] The Applicants say that the Officer did not consider the totality of the evidence and that, when taken together, the documents, along with the evidence submitted to the RPD, give strong support to their claim.

[60] I disagree. In my view this argument cannot succeed. It overlooks the weakness of the two certificates. More importantly, it overlooks the strong negative credibility findings made by the RPD. To accept that the two certificates are of such significance that they would have allowed the RPD to reach a different conclusion one would be required to set aside the RPD's

finding that the testimony it received was contradictory and the documents presented to it were fraudulent.

[61] The Officer did not err in failing to hold an oral hearing. The evidence submitted by the Applicants was insufficient to displace the strong determination made by the RPD to which the Officer owed deference. In a PRRA the new evidence must "be of such significance that it would have allowed the RPD to reach a different conclusion": *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 47, [2016] 4 FCR 230.

VIII. Conclusion

[62] For the foregoing reasons the Officer's decision will not be set aside. It meets the *Dunsmuir* criteria of transparency, justification, and intelligibility; the outcome is within the range of possible, acceptable outcomes that are defensible on the facts and law.

[63] The application is dismissed.

[64] Neither party suggested a question for certification and none exists on this very fact specific case.

JUDGMENT IN IMM-5393-16

THIS COURT'S JUDGMENT is that the application is dismissed. There is no serious question of general importance for certification.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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