

Federal Court



Cour fédérale

Date: 20180628

Docket: IMM-4972-17

Citation: 2018 FC 668

Ottawa, Ontario, June 28, 2018

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

YIMOU WANG

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Yimou Wang [the Applicant] seeks judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of the October 23, 2017, decision of the Refugee Appeal Division [RAD] of the Immigration Refugee Board of Canada [IRB].

[2] The Applicant had sought to appeal to the RAD a decision of the Refugee Protection Division [RPD] which had found him not to be a refugee or person in need of protection due to credibility and insufficient evidence concerns. The RAD refused this appeal and maintained that the Applicant was not a refugee or person in need of protection.

[3] The Applicant is a 34 year old citizen of China. He worked in construction and has six years of education. He states he had a workplace accident in late 2013 which injured his back. The Applicant states that he pursued both western and traditional treatments which were of limited assistance and for this reason he turned to Falun Gong in summer 2014 at the recommendation of a friend.

[4] The Applicant further alleges that in October 2014 the Public Security Bureau [PSB] raided a residence where he was practicing Falun Gong with a group. He states that on being warned of the approaching authorities the group members fled and he went into hiding at the home of his second cousins.

[5] The Applicant states that after the raid he was subsequently informed the PSB was continuing to seek him, a summons was issued against him, and his employment was terminated.

[6] The Applicant came to Canada with the assistance of a smuggler in February 2015 and states that he subsequently began participating in public Falun Gong activities in Canada.

[7] For the reasons that follow, the application is dismissed.

II. Issues

[8] The critical issue in the present matter is whether the credibility finding of the RAD that the Applicant is not a genuine practitioner of Falun Gong is reasonable.

[9] The Applicant says that credibility findings were made without adequately considering that he possesses only six years of education and that he was nervous at the time of the RPD hearing. He says that those two conditions explain the problems with his testimony which both the RPD and the RAD found was hesitant and problematic, causing them to make negative credibility findings.

[10] The Applicant also says that given his limited education, the RAD had unreasonable expectations of his ability to explain the medical nature of his back problems and to explain his understanding of Falun Gong. Therefore he submits that the negative credibility findings based on his knowledge of his injury and religion were unreasonable.

[11] In support of the RAD's credibility findings the Respondent says the Applicant is simply asking the Court to reweigh the evidence. As is well known, reweighing evidence is not the role of the Court on judicial review: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59, 61, [2009] 1 SCR 339 and subsequent cases such as *Cabdi v Canada (Citizenship and Immigration)*, 2016 FC 26 at para 26, 262 ACWS (3d) 1016.

III. Standard of Review

[12] The standard of review when examining the RAD decision is reasonableness: *Wahjudi v Canada (Citizenship and Immigration)*, 2017 FC 279 at paras 6-7, 278 ACWS (3d) 376.

[13] 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 v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*].

[14] 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.

IV. Analysis

A. *Summary*

[15] The credibility findings of the Immigration Refugee Board are entitled to significant deference: *Zhai v Canada (Citizenship and Immigration)*, 2012 FC 452 at para 14, 214 ACWS (3d) 548.

[16] Although the Applicant alleges that the RAD made unreasonable credibility findings, it is my view that those findings by the RAD were reasonable given the evidence. For example, counsel for the Applicant has urged that there is another way to read many of the questions posed by the RPD and the ensuing answers given by the Applicant. Counsel points to portions of a partial transcript to show that the discussion appears to be somewhat confusing. However, it is equally true that the questions posed and the answers given are fully capable of supporting the conclusions drawn by the RPD and RAD.

[17] Having reviewed the partial transcript it is my view that the findings which were based on the questions posed by the RPD and the answers provided by the Applicant are reasonable. In addition, if there was any confusion, it could have been cleared up by questions from the Applicant's then counsel.

[18] On the facts of this case, in order to find that the credibility conclusions drawn by the RAD were unreasonable, the Court would have to reweigh the evidence instead of determining whether the RAD's analysis and conclusions falls within the range of acceptable outcomes. As previously stated, that is not the role of the Court - all the more so when significant deference is owed to those credibility assessments.

[19] The decision by the RAD meets the *Dunsmuir* criteria in that it is justified, intelligible, and transparent. The Applicant says no valid reasons were given by the RAD for finding his testimony and evidence was not credible. I disagree and would highlight the following examples.

B. *The RAD listened to the recording of the RPD hearing and explained why it agreed with credibility findings of the RPD*

[20] The RAD made several credibility findings after listening to the recording of the hearing before the RPD. In determining that it would confirm the decision of the RPD, the RAD independently considered and discussed the testimony of the Applicant. There were three main areas considered: (1) the medical booklet submitted to show why the applicant began practicing Falun Gong; (2) the Applicant's knowledge of the practice of Falun Gong; and (3) a police summons. It is not necessary in this application to review any of the other findings as they likewise meet the criteria of reasonableness.

(1) The medical booklet

[21] The RPD found that the Applicant could not recall one of his medical diagnoses nor explain it in any detail. It concluded that he did not see any doctors for his back issues and as a result gave no weight to the medical booklet with respect to whether it supported the Applicant's allegation that he turned to Falun Gong to relieve his back pain.

[22] The Applicant submitted to the RAD that, given his limited education and nervousness when testifying before the RPD, it was possible he would not know the medical term for his back pain. The RAD listened to the recording of the RPD hearing and noted that the Applicant told the RPD that his diagnosis was a sprained back. It also noted that when he was asked by the RPD why he did not remember the second diagnosis he had received of a "lumbar disc protrusion" the Applicant replied that the doctor only mentioned it once.

[23] The RAD made credibility findings with respect to the medical booklet. It observed that while the first two diagnoses in the medical booklet referred to back sprain and disc protrusion, the other diagnoses, including all those made by a new doctor, only noted that he had a lumbar disc protrusion with no mention of a sprain. The RAD found that it was reasonable to expect the Applicant to know the contents of the medical booklet since it was submitted by him to support his allegation that he began Falun Gong to obtain relief from his back pain. Likewise the RAD found it suspect that no description of this other medical issue was made, even in layman's terms, by the Applicant. The RAD ultimately agreed with the RPD and gave the booklet no weight in terms of proving that he began practising Falun Gong because of his back pain.

[24] The RAD discussed the evidence in the medical booklet and provided clear reasons for giving it no weight. The RAD set out for the Applicant why it came to this conclusion. Although

the Applicant would have preferred a different conclusion, the medical booklet analysis by the RAD meets the *Dunsmuir* criteria of justification, transparency, and intelligibility. It is a reasonable credibility finding.

(2) The Applicant's practice of Falun Gong

(a) *In China*

[25] After listening to the recording of the hearing, the RAD perceived that the RPD had a meaningful advantage in assessing the Applicant's testimony and evidence concerning his practice of Falun Gong in China. It therefore deferred to the RPD's credibility finding that the Applicant did not practice Falun Gong in China and that he had not established that he attended a group practice that was raided by the PSB.

[26] The RAD found, as did the RPD, that the Applicant's "evidence about his practice of Falun Gong was very hesitant and extremely limited." The RAD determined that the RPD had been patient with the Applicant. It had repeated and rephrased questions, giving him every opportunity to answer them. At one point the RPD briefly adjourned the hearing to help the Applicant compose himself but, although he said he felt better when he returned, he was still not able to answer basic questions about his Falun Gong practice in China.

[27] The RAD found that the questions were direct and uncomplicated and there was no error in the RPD's conclusion that the Applicant had not established on a balance of probabilities that he practiced Falun Gong in China. The RAD also determined that the findings of the RPD which were made to support that conclusion were neither erroneous nor microscopic, but actually went to the heart of the claim.

[28] The RAD reasonably found that practising Falun Gong went to the heart of the Applicant's claim. The whole basis for the refugee claim by the Applicant was that he was a Falun Gong practitioner in China whose practice group was raided by the PSB. The risk he identified was that the PSB was still trying to locate him to arrest, jail and mistreat him. Once it was determined that the Applicant had not proven on a balance of probabilities that he actually practiced Falun Gong in China or was wanted by authorities for Falun Gong practice, the basis of his claim, other than a *sur place* claim which he raised, disappeared.

(b) *The Applicant's knowledge of Falun Gong and his sincerity of belief*

[29] The Applicant argued in this Court and before the RAD that his belief in Falun Gong was genuine and sincere. He claimed that he began practising Falun Gong in July 2014 in China and has continued to practice it in Canada. He submitted that his apparent lack of knowledge of Falun Gong arose from his limited education, the short time he had been practising, and that he was a construction worker.

[30] Both the RPD and the RAD found that the Applicant had very minimal knowledge of Falun Gong. He told the RPD that he had "no idea" as to the basic principles of Falun Gong. The RPD found that he described Falun Gong as a medical treatment or health benefit and not a belief system or way of life.

[31] In determining that the Applicant is not a genuine Falun Gong practitioner, the RAD found that his lack of knowledge of Falun Gong was "overwhelming" for someone who alleged he had been practising it for approximately three years, even bearing in mind his only six years of schooling.

[32] The RAD noted from the jurisprudence of this Court that there is a low bar for determining the religious knowledge of a refugee and that the analysis should not be at a microscopic level. The RAD reviewed the findings by the RPD and concurred with them. It pointed out that the Applicant could not tell the RPD what Falun Gong was or talk about its principles. When he was questioned about that by the RPD the Applicant replied that he had “no explanation”.

[33] Having listened to the recording of the hearing the RAD said that it agreed with the RPD that the Applicant “did not demonstrate in any way that he had knowledge of Falun Gong or that he is seriously pursuing his practice [of it] in Canada” [emphasis added]. The RAD specifically found that the Applicant’s testimony did not indicate that he had any knowledge of the Fa nor was there any evidence that he had actually read the Zhuan Falun, a copy of which he possessed. The three brief letters of support, two of which were from the same person, provided to confirm that they practiced Falun Gong with the Applicant were found to be worth little weight given the context and as such were insufficient to overcome his complete lack of knowledge of Falun Gong.

[34] Counsel for the Applicant relies upon *Lin v Canada (Citizenship and Immigration)*, 2012 FC 288, 9 Imm LR (4th) 178 [*Lin*] in which Mr. Justice Russell noted there is a very low standard for refugee claimants to meet to demonstrate religious knowledge as a requirement for proving their religious identity. In *Lin* a refugee with only three years of formal education and two and a half years of practising Falun Gong succeeded in challenging a RPD decision that found he was not a Falun Gong practitioner. Justice Russell determined that the RPD had “engaged in an overly stringent and microscopic examination of the [a]pplicant’s knowledge of

Falun Gong ... [and] had based its finding that he is not a Falun Gong practitioner on unattainable and unreasonable requirements for knowledge of the practice”: at para 61.

[35] Although the refugee claimant in *Lin* possessed only one-half of the formal education of the Applicant, that refugee had knowledge of the major Falun Gong books, knowledge of what “forbearance” is, and knowledge of what a “falun” is. He was also able to comment on “karma” and the “third eye”: see *Lin* at para 58.

[36] The Applicant did not describe any aspect of the basic principles of Falun Gong nor could he explain how the exercises were associated to it. He characterizes his lack of knowledge as a form of humility in his submissions before this Court. He submits that he was humble enough to say he practised Falun Gong but he did not know what it was and, as a beginner, that should not be held against him. It is difficult to see how lack of knowledge that is so serious that it was described as overwhelming should be considered humility instead of lack of awareness or a finding, as in this case, that the Applicant is not a genuine Falun Gong practitioner.

[37] In my view, it is neither too stringent a test, nor is it a microscopic analysis, to expect that the Applicant should have been able to make a rudimentary comment about the nature or purpose or principles of Falun Gong. The Applicant’s formal education was six years, half that of the applicant in *Lin*, and the Applicant’s religious training purported to be approximately three years which is similar to that of the applicant in *Lin* (2.5 years). Yet the applicant in *Lin* appears to have been far more knowledgeable about Falun Gong - its teachings, tenets and books - than the Applicant in this matter.

[38] Other than a vague reference to the fact that in the group practice there was more energy, the Applicant could not tell the RPD anything about the practice of Falun Gong except that the exercises helped him to feel better. Given those facts, it was entirely reasonable for the RPD and the RAD to find that the Applicant was not a genuine practitioner with a sincere belief in Falun Gong. The RPD and RAD only sought minimal knowledge, given the low bar in the jurisprudence and the Applicant's personal circumstances, and even then he was unable to show such minimal knowledge or sufficiently explain why he lacked it.

[39] The reasons provided by the RAD are, again, justified, intelligible, and transparent, while the conclusion it reached on this issue falls within the range of possible, acceptable outcomes based on the facts and law. On that basis, this credibility finding is also reasonable.

(3) The police summons

[40] The Applicant tendered as corroboration of his possible pursuit by the PSB for practising Falun Gong a police summons requiring him to appear at the Social Security Office of the PSB in Fuqing City for interrogation. The RPD dismissed the summons out of hand on the basis that it would be very easy to reproduce.

[41] Before the RAD the Applicant argued that the RPD had not taken the time to analyse the document to determine whether it was genuine. He pointed out that it had a security feature in the form of a red stamp and that there is a presumption of authenticity that should have been applied.

[42] The RAD reviewed the summons and compared it to the samples in the National Documentation Package [NDP] for China dated March 31, 2017, found in the certified tribunal

record at pages 40-47. The NDP stated that since 2003 the format of the summons has not changed and regional variations are not meant to exist. It also stated that the summons is supposed be used throughout the country. The RAD compared the original summons to the samples and determined that the structure and format of the summons was somewhat inconsistent.

[43] Based on inconsistencies and considering the Applicant's lack of knowledge of Falun Gong as well as the availability of fraudulent documents in China the RAD found that on the balance of probabilities the document was fraudulent.

[44] The Applicant argues that foreign documents are presumed to be authentic. He also says that it was not clear what differences were found by the RAD and as such the finding was not transparent.

[45] The RAD provided specific examples of inconsistencies it found compared to the sample summons in the NDP. For example, it said that an identifier that should have been placed before the name of the person in the top left part of the form was missing. Similarly, the structure of the second and third lines were inconsistent with the NDP in that the caricature before the number forty-five was on the second line but as shown in the sample it ought to have been on the third line.

[46] Counsel for the Applicant also submitted that the sample forms were no longer available online and so it was not possible to critique the findings rendering this finding unreasonable due to lack of transparency. In this case the samples were provided in the certified tribunal record so

counsel was not prevented from making this critique and the argument of lack of transparency does not hold weight.

[47] While there is a presumption that documents issued by a foreign government are valid, it is a rebuttable presumption: *Rasheed v Canada (Minister of Citizenship and Immigration)*, 2004 FC 587 at para 19, 35 Imm LR (3d) 299. The RAD pointed to inconsistencies on the face of the document. The document in question purports to be a summons requiring the Applicant to attend for interrogation “regarding your illegal Falun Gong activities” however the RPD and the RAD each made several reasonable findings that the Applicant’s claim to be a Falun Gong practitioner was not credible and the PSB were not looking for him. The combination of the inconsistencies on the face of the document, the availability of fraudulent documents, and the nature of the credibility findings are sufficient to rebut the presumption of validity in this case as it applies to the police summons.

C. *Sur Place claim*

[48] The Applicant also put forth a *sur place* claim based on his practice of Falun Gong in Canada. The RAD determined that he had never practised Falun Gong in China and the PSB was not seeking him. In addition, the RAD agreed with the RPD that the Applicant is not a genuine Falun Gong practitioner in Canada. There was no evidence that the Applicant’s participation in Falun Gong activities in Canada had come to the attention of the Chinese authorities. It was therefore reasonable for the RAD to determine that he would not be a refugee or person in need of protection if he returned to China as there was insufficient evidence that Chinese authorities would be aware of his Falun Gong involvement and, given he was not a genuine practitioner, he

would not have cause to continue participating in Falun Gong in China. As such, it was reasonable to deny his *sur place* claim.

V. Conclusion

[49] For all the foregoing reasons, the application is dismissed.

[50] Neither party proposed a question for certification nor does one arise on these facts.

JUDGMENT IN IMM-4972-17

THIS COURT'S JUDGMENT is that the application is dismissed without certification of any question.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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