

Federal Court



Cour fédérale

Date: 20180919

Docket: IMM-830-18

Citation: 2018 FC 933

Ottawa, Ontario, September 19, 2018

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

SIYUN LIU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Ms. Liu, is a citizen of China who claims refugee protection on account of her practice of Falun Gong. The Refugee Protection Division (RPD) found that her claim was not credible, found that she was not a genuine Falun Gong practitioner, and concluded that her claim was manifestly unfounded. For the reasons that follow, this judicial review is granted because of the RPD's unreasonable consideration of the subpoena. Without providing any analysis, the RPD found that the subpoena tendered was fraudulent and this conclusion led to the RPD's ultimate finding that the claim was manifestly unfounded.

Background

[2] Ms. Liu claims to have been practising Falun Gong since 2016. In August 2017, the Public Security Bureau of China (PSB) raided one of her practice groups and arrested some members. She escaped and went into hiding. With the aid of a smuggler, she obtained a United States travel visa and made her way to Canada where she made a refugee claim.

RPD Decision

[3] In its decision of December 22, 2017, the RPD determined that Ms. Liu did not establish there was a serious possibility of persecution on a Convention ground or that she would be subject to persecution upon return to China because she was not a genuine Falun Gong practitioner.

[4] The RPD asked Ms. Liu about the factual aspects of Falun Gong and she was asked about the conceptual aspects by her legal counsel. She was able to answer some factual questions, but gave confused responses to the conceptual questions of Falun Gong. For documentary evidence, she produced two letters from fellow practitioners in Canada. The RPD noted that the author of the first letter was unidentifiable, and the second letter did not provide any evidence to determine if she was a genuine practitioner. The photographs offered into evidence of Ms. Liu partaking in Falun Gong practices in public did not demonstrate a sustained practice in Canada according to the RPD.

[5] The RPD also noted a lack of evidence from her Falun Gong tutor or fellow practitioners in China, and the lack of a valid reason for the absence of this evidence. The RPD found that she made inconsistent statements regarding her practice in China that led the RPD to draw a negative credibility inference.

[6] Ms. Liu did provide a subpoena as evidence of the possibility of her being persecuted should she return to China. The RPD determined that such documents can easily be forged and that subpoenas are rarely enforced in China. Further, the RPD noted that there was no follow-up summons issued and concluded that Ms. Liu was not wanted by the PSB.

[7] The RPD noted that she obtained a visa to travel to the US and traveled there on her Chinese passport, but she provided contradictory testimony regarding the whereabouts of her passport after she illegally entered Canada. As a result of this, the RPD drew a negative credibility inference. Overall, the RPD concluded that she was not a genuine Falun Gong practitioner in Canada and that she was not wanted by the PSB. Therefore, the RPD determined that the summons was fraudulent and found her claim to be manifestly unfounded.

Issues

[8] While the applicant raises a number of issues with the RPD decision, my finding with respect to the RPD's treatment of the subpoena is dispositive of this judicial review.

Standard of review and analysis

[9] The parties agree that the standard of review is reasonableness. A reasonable decision has the *Dunsmuir* hallmarks of “justification, transparency and intelligibility” (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[10] Ms. Liu argues that the treatment of the subpoena by the RPD was unreasonable and led to the manifestly unfounded conclusion. There are significant consequences to a claimant when a claim is manifestly unfounded.

[11] In assessing Ms. Liu’s claim, the RPD made negative credibility findings regarding her knowledge of Falun Gong and her failure to produce credible supportive evidence. However, it is not clear what led the RPD to conclude that the subpoena filed by Ms. Liu was a fraudulent document.

[12] The RPD states that it considered the National Documents Package and noted that there is a high risk of fraudulent documents in Chinese refugee claims. The RPD also noted that subpoenas or court summonses in China are not typically adhered to. The RPD noted that there appeared to have been no consequential documents or penalties against Ms. Liu for having missed her summons date.

[13] However, the RPD did not provide any analysis or reasons as to why the subpoena before it for consideration was fraudulent. The RPD did not consider any of the features of the

document itself such as its format, text, wording, issuing authority, stamps or seals. It appears the RPD based its fraudulent finding on the information in the National Documents Package that there is a high risk of fraudulent documents in Chinese refugee claims. Be that as it may, in order for the RPD's conclusion to be justified, transparent and intelligible, it needed to provide justification for finding the subpoena fraudulent in this case.

[14] At paragraph 42 of the decision, the RPD finds that the subpoena “does not really advance her claim one way or another,” but then at paragraph 59 the RPD concludes “that the summons tendered is fraudulent.” Even accepting that it was simply a typographical error for the RPD to refer to the subpoena as a summons, what is not clear is how the RPD went from not assigning any weight to the document, to then declaring the document to be fraudulent.

[15] The RPD then compounds the impact of this finding when it links the “fraudulent summons” to the ultimate conclusion that Ms. Liu's claim is manifestly unfounded. How the RPD reached this conclusion is neither transparent nor intelligible.

[16] In *Warsame v Canada (Citizenship and Immigration)*, 2016 FC 596, the Court stated the following regarding the distinction between negative credibility findings and fraudulent findings:

[30] For a claim to be fraudulent, it would be required that a situation be represented of being of a certain character when it is not. But not any misstatement or falsehood would make a refugee claim fraudulent. It must be that the dishonest representations, the deceit, the falsehood, go to an important part of the refugee claim for the claim to be fraudulent, such that the determination of the claim would be influenced in a material way. It seems to me that a

claim cannot be fraudulent if the dishonesty is not material concerning the determination of the claim.

[17] Here the only part of Ms. Liu's claim that the RPD found "fraudulent" was the subpoena document. As noted above, however, the RPD does not reasonably explain how it reached that conclusion. The RPD does not identify "dishonest representations, the deceit, the falsehood, [that] go to an important part of the refugee claim" in order to support its conclusion that the claim itself was manifestly unfounded.

[18] Reason and logic dictate that when the RPD makes such a significant finding, the reasoning will be transparent and intelligible and well-reasoned. That is not the case here. Therefore, the decision of the RPD is unreasonable and this judicial review is granted.

JUDGMENT in IMM-830-18

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted. The December 22, 2017 decision of the Refugee Protection Division is set aside and the matter is remitted for redetermination by a different panel; and
2. No question of general importance is proposed by the parties and none arises.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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