Federal Court  Cour fédérale

Date: 20190208

Docket: IMM-976-18

Citation: 2019 FC 162

Ottawa, Ontario, February 8, 2019

PRESENT: The Honourable Mr. Justice Norris

BETWEEN:

QINYANG CHEN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The applicant, Qinyang Chen, is a citizen of the People's Republic of China. He claimed refugee protection in Canada in August 2017 on the basis of his fear of persecution in China as a member of an outlawed Christian sect, the "Shouters." The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada rejected his claim on credibility grounds in a decision dated December 6, 2017. The RPD member also found that the applicant's claim had no

credible basis within the meaning of section 107(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. This barred the applicant from access to the Refugee Appeal Division (see section 110(2)(c) of the *IRPA*). The applicant now applies for judicial review of this decision under section 72(1) of the *IRPA.*

[2] For the following reasons, this application for judicial review is allowed.

II. BACKGROUND

[3] The applicant was born in Changle City, Fujian Province, in September 1997. He relied on an original People's Republic of China Resident Identity Card as well as his family's household register to establish his identity and nationality.

[4] According to the applicant, he grew up in a troubled home because his parents fought constantly. He could not concentrate at school and, as a result, did not continue past high school. He worked for a time as a barber but mainly he was unemployed. The applicant was generally unhappy in his life until a close friend, who knew of his difficulties, suggested that he attend a Christian house church with him. The group was part of a Christian sect sometimes called the "Shouters" because of how they pray. This sect is prohibited by the Chinese government but the applicant's friend assured him that they took security precautions and they had never had any trouble with the authorities.

[5] The applicant began attending the house church in May 2016. After a few months, the sadness that had burdened his life began to lift. He states that he was so happy with the change in his life that he encouraged another friend to join as well.

[6] In his narrative in support of his claim for refugee protection, the applicant stated that on January 16, 2017, the Public Security Bureau [PSB] raided the house church while a meeting was underway. The applicant was able to escape because he had been outside the house keeping watch when the PSB arrived. After warning the others of the raid by phone, the applicant fled on a motorcycle. He drove to his uncle's house, which was about an hour away, and hid there. The applicant learned from his father that two of his friends had been arrested in the raid while another had gone into hiding. The applicant also learned from his father that the PSB were looking for him. The PSB had come by his father's home and left a summons directing the applicant to attend a local PSB office the next day. The applicant testified that his father eventually mailed the summons to him. This document was tendered at the RPD hearing.

[7] The applicant stated that he remained in hiding at his uncle's home until arrangements could be made for him to escape from China with the assistance of a smuggler. According to the information contained in the forms the applicant completed as part of his refugee claim, he left China via Shanghai on June 22, 2017. He used a false Hong Kong passport provided by the smuggler. The applicant flew to Amsterdam, then to Ecuador, the Bahamas, Miami, New York and Seattle. He used a second false passport provided by smugglers along the way. He crossed the Canada/U.S. border by foot irregularly on July 7, 2017, and then flew from Vancouver to

Toronto the next day. The applicant destroyed his travel documents on route on the instructions of the smugglers who facilitated his travel.

[8] The first record Canadian authorities have of the applicant's presence in Canada is when he presented his refugee claim to the Etobicoke office of Citizenship and Immigration Canada on August 1, 2017. The supporting documents had been prepared with the assistance of a lawyer in Toronto a few weeks earlier.

[9] The applicant's refugee hearing took place on November 2, 2017. He testified initially that the raid on the house church occurred at the beginning of May 2017. After the raid, he went immediately to his uncle's house and remained in hiding there until he left China on June 20, 2017. After asking the applicant a number of questions about his travel route and the documents he had used, the member stated: "See, the reason why we are going through this, I will tell you why. I have no record on paper when you left China and entered Canada. Do you have any boarding passes, any luggage tags, any papers from your travel?" The applicant replied: "I have like – my previous cell phone has some pictures." He explained that it was an Apple phone and it would have recorded the dates when he took photographs of scenery along the way. He still had the phone. This was the only documentation he had of his travel from China to Canada. The member stated: "Okay, so we will return to that if we need to, okay?"

[10] Later in the hearing, the member returned to the date of the PSB raid. The applicant reiterated that it had occurred at the beginning of May 2017. The member then pointed out to the applicant that the summons was dated January 16, 2017. The applicant immediately corrected

himself and stated that the raid was on January 15, 2017. He explained that he did not have a good memory. (The applicant was not asked about the one-day discrepancy between this date and the date he gave for the raid in his original narrative.)

[11] The member then asked the applicant how long he had stayed in hiding at his uncle's. The applicant replied: "More than 10 days." The member asked: "More than 10 days and less than, what, less than a month?" The applicant replied affirmatively. After confirming that the applicant had not stayed anywhere else before leaving China, the member stated that, based on the applicant's evidence, the raid had occurred some six months before he left. The member asked again: "You said you stayed at your uncle's home more than 10 days, but less than one month. Is that right?" This time the applicant answered "No." The member asked him if he remembered how long he had stayed at his uncle's, the applicant replied: "I do not quite remember how long I stayed. A while." In response to questions from his counsel, who reminded him that he had said the raid happened on January 15th and that he had left China on June 20th, the applicant stated that he had stayed at his uncle's home for five months. Asked why he had given a different answer before, the applicant said he had misunderstood the question. (In his original narrative, the applicant said simply that he had stayed there until he left China and did not give a specific duration for the stay.)

[12] The applicant also described his religious practices since he has been in Canada. This part of the evidence does not have any bearing on the disposition of this application so it is not necessary to set it out here.

III. DECISION UNDER REVIEW

[13] The member accepted that the applicant had established his personal identity and citizenship on the basis of his Resident Identity Card and the household register. However, the member rejected the claim because she did not find the applicant's claim that he had attended an underground church in China and, as a result, was of interest to the PSB to be credible. This determination was based on the following considerations.

[14] First, the member found that the applicant had "provided inconsistent testimony of the timing of the PSB raid, the period of the time he spent in hiding, and of his travels on route to Canada." After noting that the applicant had "provided no documentary evidence to corroborate his exit from China and entry into Canada," the member cited the judgment of Justice Nadon, as he then was, in *Elazi v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 14891 (FC) [*Elazi*], as authority for the following propositions:

> [T]he failure to provide a passport, or any documentary evidence of the person's travel in the form of luggage tags or boarding passes, is an important matter in assessing the credibility of a claim. This documentation provides evidence of the route taken to Canada as well as previous travel, and therefore the claimant's location during the events that allegedly gave rise to the fear that forms the basis of a claim, and without it, the claimant's testimony regarding the chronology and history of his travel will remain largely unconfirmed.

The member then concluded as follows: "The panel finds that the failure to provide corroborating travel documents without a reasonable explanation, in addition to the other credibility concerns outlined below, impugns the claimant's overall credibility."

[15] The member also noted that she had considered whether to give the applicant an opportunity to provide photographs from his phone to document his travels. The member asked herself: “would the pictures on a person’s cell phone amount to sufficiently credible and reliable evidence, on a balance of probabilities, of the person’s physical presence in an identifiable location at a specific time?” In answer to this question, the member simply stated: “The panel has determined that they would not.” No further explanation is given.

[16] Second, the member noted that the summons produced by the applicant “is a single page with black print and a red-ink stamp as the only, rather rudimentary, security feature, and thus easily forged.” The member then continued: “In light of the above credibility concerns and the claimant’s inconsistent testimony regarding the timing of the PSB raid, the panel refers to documentary evidence that indicates the widespread availability of fraudulent documents in China.” On this basis, the member found that the applicant had “produced a fraudulent document as the summons and draws a further negative credibility inference.”

[17] The member then turned to the applicant’s “prospective risk of persecution on a forward-looking basis” because of his religious profile. After reviewing the applicant’s evidence of his Christian practices in Canada and his understanding of Christian doctrine, the member concluded that the applicant had failed to demonstrate a sufficient level of involvement with his church in Canada to establish, on a balance of probabilities, that he is a committed member of that Church and a genuine Christian practitioner.

[18] For these reasons, the member found that the applicant is neither a Convention refugee under section 96 nor a person in need of protection under section 97(1) of the *IRPA*. Without any further analysis, the member also found that "pursuant to subsection 107(2) of *IRPA*, the claimant provided no credible or trustworthy evidence on which a favourable decision could be made, and therefore there is no credible basis for the claim."

IV. STANDARD OF REVIEW

[19] It is well-established that this Court reviews the RPD's assessment of the evidence before it on a reasonableness standard (*Hou v Canada (Citizenship and Immigration)*, 2012 FC 993 at paras 6-15 [*Hou*]). This standard applies to the RPD's factual findings, including its credibility determinations (*Pournaminivas v Canada (Citizenship and Immigration)*, 2015 FC 1099 at para 5; *Nweke v Canada (Citizenship and Immigration*), 2017 FC 242 at para 17), its findings concerning the genuineness of documents, and its interpretation of documentary evidence (*Abdulkadir v Canada (Citizenship and Immigration)*, 2018 FC 318 at para 21). This standard also applies to the RPD's determination that a claim had no credible basis (*Hernandez v Canada (Citizenship and Immigration)*, 2016 FC 144 at para 3).

[20] It is also well-established that this Court should show significant deference to the RPD's credibility findings (*Su v Canada (Citizenship and Immigration)*, 2013 FC 518 at para 7). This is because the RPD is well-placed to assess credibility (*Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315, [1993] FCJ No 732 (FCA) at para 4 (QL); *Hou* at para 7). It has the advantage of observing the witnesses who testify and it may have expertise in the subject matter that the reviewing court does not share, including with respect to

country conditions (*Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at para 42; *Zhou v Canada (Citizenship and Immigration)*, 2015 FC 821 at para 58). Nevertheless, the reviewing court has a duty to ensure that the RPD's credibility findings are reasonable.

[21] Reasonableness review "is concerned with the reasonableness of the substantive outcome of the decision, and with the process of articulating that outcome" (*Canada (Attorney General) v Igloo Vikski Inc*, 2016 SCC 38 at para 18). The reviewing court examines the decision for "the existence of justification, transparency and intelligibility within the decision-making process" and determines "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47). These criteria are met if "the reasons 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" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16). The reviewing court should intervene only if these criteria are not met. It is not the role of the reviewing court to reweigh the evidence or to substitute its own view of a preferable outcome (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61).

V. ISSUES

[22] The applicant challenges the decision of the RPD on two principal grounds: first, the RPD's assessment of his credibility is unreasonable; and second, the RPD's "no credible basis" finding is unreasonable. With regard to the credibility assessment, the applicant takes issue with the RPD's assessment of his travel history, the summons, and his religious identity.

VI. ANALYSIS

[23] As I will explain, I agree with the applicant that the RPD's assessment of the evidence concerning his travel history and the summons is unreasonable. This is sufficient to require a new hearing. It is therefore not necessary to address the other issues raised by the applicant.

[24] The applicant's accounts of the experiences that led him to claim refugee protection in Canada contained two potentially significant inconsistences: one concerning when the PSB raid on the house church occurred (January 15 or 16, 2017; or early May 2017); the other concerning how long he was in hiding at his uncle's home before he escaped from China (for five months, or between 10 days and a month). If these inconsistencies remained unexplained, they could well provide a basis for rejecting the applicant's claim because his account is not credible. That, however, is not how the member reasoned. Instead, the member considered these inconsistencies together with the absence of evidence to corroborate the applicant's account of his travels from China to Canada and drew an adverse inference about the applicant's credibility generally from this combination of factors. In my view, the member erred in relying on the absence of corroboration for the applicant's travels. As a result, her assessment of this evidence and its implications for the applicant's credibility is unreasonable.

[25] The member found that the applicant had provided inconsistent testimony about when he left China and about his travels on route to Canada and, on this basis, drew an adverse inference from the absence of corroborative evidence. There are two problems here.

[26] First, the record does not reasonably support the member's assessment of the evidence concerning the applicant's travels. At worst, there was a minor inconsistency concerning when the applicant said he left China (June 20, 2017, according to his testimony; June 22, 2017, according to the documents he filed when he made his refugee claim). Unexplained inconsistencies, omissions, or contradictions reasonably can lead to adverse credibility findings but such findings should not be "based on a microscopic evaluation of issues peripheral or irrelevant to the case" (*Haramichael v Canada (Citizenship and Immigration)*, 2016 FC 1197 at para 15, citing *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at paras 10-11; *Clermont v Canada (Citizenship and Immigration)*, 2019 FC 112 at para 30).

[27] As for the applicant's travels from China to Canada, while his testimony before the RPD was vague about how long he spent at each place along the way, he provided precise dates of departure and arrival in his original refugee claim (which was completed when the events were presumably much fresher in the applicant's mind). No inconsistencies in his account of his journey from China to Canada are apparent to me anywhere in the record.

[28] There is no general requirement for corroboration and a panel errs if it makes an adverse credibility finding on the basis of the absence of corroborative evidence alone (*Ndjavera v Canada (Citizenship and Immigration)*, 2013 FC 452 at para 6). If there are valid reasons to question a claimant's truthfulness, the panel may also consider the claimant's failure to provide corroborative evidence, but only where the claimant could not give a reasonable explanation for the absence of such evidence (*Dundar v Canada (Citizenship and Immigration)*, 2007 FC 1026

at para 22, citing *Amarapala v Canada (Minister of Citizenship and Immigration)*, 2004 FC 12 at para 10).

[29] In the present case, it was an error for the member to require corroboration for the applicant's account of his travels absent some reason to doubt his veracity on this point. The record does not reasonably support the member's conclusion that there were inconsistencies in the applicant's account of his travels that raised concerns about his veracity. Moreover, having erroneously placed a burden on the applicant to produce travel documents, the member does not explain why she did not find the applicant's explanation for why he did not have any – the smugglers had told him to destroy them – to be reasonable. As for the evidence the applicant did offer to provide to corroborate his account – the photographs on his phone – it was the member herself who determined (on what basis we do not know) that they would have no probative value. It should also be noted that while there were discrepancies in the applicant's evidence concerning other events (namely, the date of the PSB raid and how long he stayed in hiding), the member does not explain why she rejected the applicant's explanation for them. In all of these respects, the decision lacks justification, transparency and intelligibility.

[30] Second, and even more importantly, when the applicant left China, when he arrived in Canada, and where he was in between, are all irrelevant to why he is claiming protection in Canada. Unless there were reasons to doubt that the applicant was telling the truth about when he left China and when he arrived in Canada (and none are apparent on the record), this part of his evidence had nothing to do with his credibility generally. The absence of corroboration for the applicant's account on these peripheral matters does not make it less likely that he is telling the

truth about why he is claiming protection. The member, however, finds that the applicant's failure to provide corroborating travel documents without a reasonable explanation impugned his overall credibility. One simply has no bearing on the other. It was an error for the member to conclude otherwise.

[31] As set out above, the member relied on *Elazi* in support of her assessment of the relevance of travel documents and the significance of their absence. In my view, *Elazi* does not stand for the sweeping propositions the member purports to draw from it. More to the point, it is of limited, if any, applicability here. What was at issue in *Elazi* was whether it was reasonable for the Refugee Division to conclude from the absence of a passport and air ticket (among other considerations) that the claimant in that case had failed to establish his identity as a citizen of the Democratic Republic of the Congo. Justice Nadon determined that such documents can have a direct bearing on the questions of identity and nationality. In the present case, however, the member was satisfied that the applicant's personal identity and citizenship had been established. *Elazi* does not support the member's assessment of the broader significance of the absence of travel documents in a case where identity and nationality had been established by other evidence.

[32] For these reasons, the member's assessment of the significance of the absence of corroboration for the applicant's account of his travels is unreasonable. This error infects other critical parts of the decision. The member noted that her assessment of this factor, "in addition to the other credibility concerns outlined below," impugned the applicant's "overall credibility." One of those other credibility concerns was the applicant's use of what the member determined to be a fraudulent document in the form of the summons. But that determination was itself made

in part in light of the credibility concerns arising from the applicant's failure to corroborate his travel chronology (see para 16, above). The member's reasoning comes close to being circular; at the very least, these two factors are closely intertwined. Moreover, once the other concerns are stripped away from the member's analysis of the summons, all that is left is an assessment that is virtually identical to one recently found to be unreasonable by Justice Ahmed in *Ye v Canada (Citizenship and Immigration)*, 2019 FC 67 at para 15. I reach the same conclusion here.

VII. CONCLUSION

[33] For these reasons, the application for judicial review is allowed, the decision of the RPD dated December 6, 2017, is set aside, and the matter is remitted for reconsideration before a differently constituted panel of the RPD.

[34] Neither party submitted a serious question of general importance for certification under section 74(d) of the *IRPA*. I agree that none arise.

JUDGMENT IN IMM-976-18

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed.
2. The decision of the Refugee Protection Division dated December 6, 2017, is set aside and the matter is remitted for reconsideration by a differently constituted panel.
3. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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