

Federal Court



Cour fédérale

**Date: 20190221**

**Docket: IMM-2686-18**

**Citation: 2019 FC 216**

**Toronto, Ontario, February 21, 2019**

**PRESENT: The Honourable Mr. Justice Southcott**

**BETWEEN:**

**ENHUI WANG**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] This is an application for judicial review of the decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board, dated May 10, 2018, in which the RAD confirmed the determination of the Refugee Protection Division [RPD] that the Applicant is not a Convention Refugee or a person in need of protection, pursuant to ss 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] As explained in more detail below, this application is dismissed, because, having considered the Applicant's arguments, I find the decision of the RAD to be reasonable.

## II. Background

[3] The Applicant, Enhui Wang, is a 37-year-old Chinese national. She alleges that, in May 2016, she was with a friend in Fujian, China, on their way to get coffee, when the friend suggested they stop at a meeting along the way. The meeting was at a house where a man was talking about Christianity to a group of about 30 people. Ms. Wang states that she was not familiar with Christianity and explains only that the speaker was saying something about it. She alleges that, approximately half an hour after her arrival at the meeting, the Public Security Bureau [PSB] raided the meeting and detained her for questioning. Ms. Wang claims that she was detained from May 16 to May 18, 2016.

[4] Ms. Wang was released, allegedly with the help of her parents' connections and their payment of her bail. Fearing the PSB would pursue her further, she went into hiding. She says that in June 2016, PSB officials visited her parents' home and left a summons for her to appear in court and give testimony relating to the Christianity meeting. She alleges that the PSB returned to the home several times thereafter, but she remained in hiding.

[5] Ms. Wang claims that she arranged with two smugglers to obtain a passport and a Canadian Temporary Resident Visa. She left China and travelled to Vancouver on December 29, 2016, where she made a refugee claim. Ms. Wang alleges that the smuggler told her to destroy her passport before landing in Canada, which she says she did onboard the plane. As such, she did not have a passport upon arrival.

[6] The RPD rejected Ms. Wang's claim, based on negative credibility determinations. She appealed this decision to the RAD, the negative decision of which is the subject of this judicial review.

### III. Decision under Review

[7] The RAD considered Ms. Wang's central allegation, that she was brought to a house church by her friend and that the PSB raided the assembly and arrested her. The RAD observed that the RPD found this inconsistent with the country condition information, using a "balance of possibility" test. The RAD agreed with Ms. Wang that the proper test was a balance of probabilities but noted that she had the benefit of a lower standard as a result.

[8] The RAD also considered documentary evidence referenced by Ms. Wang to the effect that certain religious groups are not tolerated and activists are often targeted, but it noted the evidence that most unregistered churches are tolerated and that harassment of those churches does not rise to a high level. The RAD concluded that there was no evidence before the RPD that the meeting Ms. Wang attended was affiliated with a religious group of the sort that is not tolerated, and found that the meeting was part of a house church. The RAD therefore agreed with

the RPD that the Applicant was not credible with respect to her allegations of her treatment by the authorities.

[9] Next, the RAD considered the absence of Ms. Wang's passport, noting that the RPD drew a negative credibility inference from the fact that she allegedly destroyed the document. The RAD disagreed with Ms. Wang that this amounted to a microscopic examination of her testimony, stated that it did not accept her explanation for destroying the passport, and agreed with the RPD in drawing a negative credibility inference.

[10] Finally, the RAD considered the summons, which Ms. Wang had submitted to the RPD and which the RPD found to be of the type used to call people to provide testimony. The RAD noted that Ms. Wang did not address in her RAD submissions the RPD's concerns with respect to this document and did not provide any explanation as to why the document does not indicate that the authorities wish to arrest her and is the sort that summons individuals to provide testimony. The RAD disagreed with Ms. Wang's argument that the RPD's findings were speculative and gave deference to the RPD's assessment of her testimony, the contents of the summons, and the country documentary evidence.

[11] Given these credibility concerns, the RAD agreed with the RPD that Ms. Wang was not a credible witness with respect to her central allegations and therefore confirmed the RPD's determination that she is not a Convention Refugee or a person in need of protection.

IV. Issues and Standard of Review

[12] The Applicant submits the following issues for the Court's consideration:

A. Was the RAD's finding, that the Applicant was not credible as to the central allegations of her claim, unreasonable?

B. Did the RAD failed to adequately review the Applicant's evidence?

[13] The parties agree, and I concur, that the applicable standard of review is reasonableness.

V. Analysis

[14] The issues articulated by the Applicant are best analysed in the context of individual components of the RAD's decision which the Applicant argues to be unreasonable. In addressing each of those components, I employ the same headings as in the Applicant's Memorandum of Argument.

A. *RAD's Credibility Assessment*

[15] First, Ms. Wang takes issue with the RAD's treatment of the RPD's reference to a "balance of possibilities" test. That reference appears in the portion of the RPD's decision where it was comparing Ms. Wang's evidence to the country condition evidence. The RPD stated that, while the documentary evidence is not conclusive and it is possible that a person who happened

upon an underground church might experience the treatment Ms. Wang alleged, the test on which matters of credibility are decided is balance of possibilities and not a mere possibility.

[16] Ms. Wang argues that the RPD's use of an incorrect test represents confusion between the test applicable to a credibility assessment and the test applicable to the risk of persecution to which a refugee claimant may be subject under s 96 of IRPA. She submits that this confusion undermines the transparency and reliability of the decisions by the RPD and RAD.

[17] The Respondent argues that the use of the word "possibilities" by the RPD is a typographical error and that the RPD was aware that the relevant test was a balance of probabilities. I am inclined to agree, as the RPD stated earlier in its decision that the onus is on a person making a refugee claim to present evidence that is credible, on a balance of probabilities, to support the allegations which form the basis of the claim. However, even if the reference to "a balance of possibilities" is not a typographical error, I agree with the Respondent that the RAD's treatment of this issue demonstrates no reviewable error. The RAD found that that a balance of possibilities test would give Ms. Wang the benefit of a lower standard than a balance of probabilities test. I agree with this analysis and certainly find it to represent a reasonable consideration of the issue.

[18] Next, Ms. Wang's submits that the RAD erred by selectively relying on the country condition evidence, surrounding the treatment of Christians or perceived Christians in China, in upholding the RPD's negative credibility finding. She notes that the RPD described the documentary evidence as referring to toleration and only sporadic harassment of underground

churches as being the “usual” attitude of Chinese authorities, while acknowledging that it is possible a person who happened upon an underground church might experience the treatment Ms. Wang alleged. She also refers the Court to a passage in the same piece of documentary evidence referenced by the RPD as stating that, in some areas of the country, local officials punished activities of unregistered groups by means including the imprisonment of worshipers.

[19] I find no reviewable error arising from the treatment of the country condition documentation. A decision-maker is presumed to have considered all evidence before it, even if not expressly mentioned in the decision, although that presumption can be rebutted if the evidence that is not referenced is sufficiently inconsistent with the decision-maker’s conclusions (*Cepeda-Gutierrez v Canada (Minister of Citizenship & Immigration)*, [1998] FCJ No 1425 (Fed TD)). In the present case, the RPD recognized that the documentary evidence was not conclusive and that the possibility existed that a person could be treated in the manner alleged by Ms. Wang. Similarly, the RAD described the documentary evidence as stating that toleration and tacit approval with sporadic harassment is the “usual” attitude of Chinese authorities. These findings are not inconsistent with the evidence to which Ms. Wang refers.

[20] It is therefore not possible to infer that either the RPD or RAD overlooked the documentary evidence upon which Ms. Wang relies. The RPD concluded that Ms. Wang’s allegations were inconsistent with its findings based on the documentary evidence, the RAD concurred with that analysis, and I find no basis to conclude that this aspect of its decision is outside the range of acceptable outcomes contemplated by the reasonableness standard.

B. *Absence of a Passport*

[21] First, Ms. Wang notes an apparent inconsistency in the RAD's decision. It states in one paragraph that it does accept her explanation as to why she destroyed her passport before landing in Canada, while it states at the end of the following paragraph that it does not accept such explanation and therefore agrees with the RPD in drawing a negative credibility inference.

[22] I agree with the Respondent's position that this apparent inconsistency results from a typographical error, in that the RAD intended to state, in the first paragraph referenced above, that it did "not" accept her explanation. This is clear from the content of both paragraphs, in which the RAD describes Ms. Wang's explanation for the destruction of the document and gives its reasons for declining to accept that explanation and drawing a negative credibility inference therefrom.

[23] Nor can I agree with Ms. Wang's argument that the RAD unreasonably arrived at this negative credibility inference or that this was a collateral matter which did not go to the core of her refugee claim. The RAD considered her explanation that she simply followed her smuggler's instructions in destroying the passport. It rejected that explanation, given that the passport had been effective, including in exiting China, and Ms. Wang nevertheless destroyed it simply at the request of her smuggler which, as noted by the RPD, she accepted without further inquiries. This analysis is within the range of reasonable outcomes, as was the RAD's finding that the passport could have provided important details to support Ms. Wang's allegations.



C. *Summons*

[24] Ms. Wang submits that, while the summons did not itself indicate that she was being sought for arrest, it did refer to a charge against her for “engaging in illegal underground house church activities.” She argues that, unlike the RPD, the RAD did not specifically challenge the authenticity of the summons, and she submits that the RAD ignored other evidence that the Chinese authorities were intent on apprehending her for more than mere questioning. She refers to her prior arrest and detention, release on bail, summons to reappear, the indication by the police at the time of her release that she had been arrested because she had been at an illegal religious gathering, and ongoing police visits to her home.

[25] However, the RPD considered the nature of the summons, in the context of the relevant country condition documents, and concluded therefrom that it was likely fraudulent. The RPD also considered the bail receipt to likely be fraudulent and, based on its overall adverse credibility findings surrounding the central aspects of Ms. Wang’s claim, found that she did not attend an underground church in China, was not arrested and detained, and was not being sought by Chinese authorities. I read the RAD’s decision as agreeing with the RPD’s analysis, including its findings with respect to the summons. Again, there is no basis for a conclusion that the RAD’s decision is unreasonable.

[26] Having found no reviewable error on the part of the RAD, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

**JUDGMENT IN IMM-2686-18**

**THIS COURT'S JUDGMENT is that** this application for judicial review is dismissed.

No question is certified for appeal.

“Richard F. Southcott”

---

Judge

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

**DOCKET:** IMM-2686-18

**STYLE OF CAUSE:** ENHUI WANG V THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 20, 2019

**JUDGMENT AND REASONS** SOUTHCOTT, J.

**DATED:** FEBRUARY 21, 2019

**APPEARANCES:**

John Savaglio FOR THE APPLICANT

Judy Michaely FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

John Savaglio FOR THE APPLICANT  
Barrister & Solicitor  
Pickering Ontario

Attorney General of Canada FOR THE RESPONDENT