

Federal Court



Cour fédérale

Date: 20190515

Docket: IMM-2581-18

Citation: 2019 FC 704

Ottawa, Ontario, May 15, 2019

PRESENT: Mr. Justice Favel

BETWEEN:

JIANXUN GUO

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review filed pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [IRPA] of a decision by the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [Board], dated May 23, 2018, denying the Applicant's claim for protection under subsection 107(1) of the IRPA. For the reasons that follow, the application for judicial review is dismissed.

II. Background

[2] The Applicant, aged 45, is a citizen of China and has claimed refugee status due to his fear of being persecuted by the Chinese authorities, namely the Public Security Bureau [PSB], as a result of being a Falun Gong [FG] practitioner.

[3] The Applicant claims that he suffered from sciatica since July of 2011. His prescribed medications only relieved the pain he suffered temporarily. The Applicant's health condition began to affect his professional and social life. To help him overcome the severe pain he was experiencing, the Applicant was first introduced to FG by his friend, Sun Yun, who welcomed him into his group in early February of 2012. After his friend taught him the movements and gave him all the basic information he needed to know, the Applicant was able to practice on his own. The Applicant alleges that his health condition improved significantly within a month of practice.

[4] On July 6, 2012, the Applicant was on a three-day holiday with a friend. It is submitted that the Applicant received a phone call from his wife that day to tell him that the PSB came to his home searching for him. The PSB seized the Applicant's computer and some notebooks and only left a receipt of the confiscated goods. Instead of returning home, the Applicant went into hiding at his cousin's home. While in hiding, the Applicant discovered that the PSB had returned to his home asking about his whereabouts. It is also submitted that the PSB searched for the Applicant at the home of his relatives. The Applicant testified that from July 6, 2012 to August 5,

2012, when he left China and arrived in Canada, the PSB searched for him at least six times. On September 19, 2012, the Applicant filed for asylum in Canada.

[5] In July of 2012, the Applicant submitted that he found out about the arrests of his fellow FG practitioners, including Sun Yun, Li Fang, Guo Song, Wang Yan, and Bai Ru Yu. The Applicant also claims to have been dismissed by his employer. In his amended Personal Identification Form [PIF], the Applicant indicated that in February of 2014, he discovered that the arrested practitioners from his group had been sentenced to four years in prison.

[6] On August 26, 2013, an article was published in the Epoch Times about the Applicant and his FG practice in Canada after being interviewed by a journalist. As a result of this article, the Applicant claims that his wife lost her job. His daughter was also not allowed to attend public kindergarten in 2013 and, instead, had to attend a private school.

III. Decision under Review

[7] In a decision dated May 23, 2018, the RPD determined that the Applicant is neither a refugee nor a person in need of protection pursuant to section 96 and subsection 97(1) of the IRPA. In arriving at its decision, the RPD considered that two issues needed to be addressed, namely the Applicant's credibility and identity as a FG practitioner.

A. *Credibility*

[8] The RPD found that the Applicant lacked general credibility.

(1) Work permit and US visa

[9] The RPD found that the Applicant previously misled Canadian immigration authorities by giving them false information when he applied for a work permit to Canada on April 21, 2011. The RPD noted that the Applicant's work permit application was presented to Canadian authorities before the Applicant was introduced to the practice of FG. The Applicant tried to argue that he did not personally file his application; thus, he could not have foreseen the errors in the application. It was submitted that the school where the Applicant was teaching took care of the filing of his application. The RPD did not find this explanation credible.

[10] It was also found that the Applicant lied to American immigration authorities. In March of 2012, the Applicant testified that he applied for the United States [US] visa prior to experiencing any issues with the PSB. The Applicant testified that his wife managed to fraudulently obtain a US visa for him without his knowledge. However, the RPD did not believe the Applicant who must have known what his wife was doing because he personally attended an interview in order to obtain his visa, based on false information.

[11] The RPD found other inconsistencies with the Applicant's allegations of fear in China. On April 13, 2012, the Applicant took a trip to Hawaii and returned to China with his US visa.

The RPD noted that “[i]f he had genuine fears, he could have applied for asylum in Hawaii, which is a US state.”

(2) Travels

[12] The RPD noted that the Applicant left China several times to travel to different countries such as Malaysia, South Africa and Hawaii. The Applicant indicated in his PIF that his purpose of visits was tourism. The RPD therefore noted some discrepancies between the Applicant’s testimony and his PIF. For instance, the Applicant alleges that he suffers from sciatica since July of 2011 and he testified that his doctor advised him to rest; however, the RPD was of the view that the Applicant was nonetheless able to travel to Malaysia during that period, from July 22, 2011 to July 28, 2011. The RPD determined that “[t]he claimant did not explain how he was able to do that, if he was in pain, and had to see different schools.”

[13] In support of his claim, the Applicant submitted a medical booklet to which the RPD gave little weight because the name of the institution was missing and there was only one entry in the booklet. The RPD also noted that there was no further detail or follow-up of the recommended treatments in the booklet.

(3) Arrested Practitioners

[14] The RPD found that the Applicant undermined his credibility with regards to the evidence he submitted about the FG practitioners who were allegedly arrested. The RPD identified a number of discrepancies and inconsistencies between the Applicant’s PIF and the

information he provided during his testimony. For instance, the Applicant stated that he was not aware of the FG practitioners' arrests until his arrival to Canada. However, the RPD reminded the Applicant that his PIF mentions that he discovered about the arrests of his fellow practitioners while he was in hiding in China. The Applicant tried to explain that being in Canada can be considered hiding. The RPD did not find this explanation credible.

[15] The Applicant testified that he found out about the alleged arrests through a website, after he entered Canada. The RPD noted that the Applicant only mentioned the arrests of four practitioners on the Claim for Refugee Protection Form, not five. The Applicant's explanation was that his wife informed him about the fifth arrest. The RPD drew a negative inference because the Applicant viewed the website on August 7, 2012, and all five arrests of his fellow practitioners can be found on the website. Considering that the Applicant's Claim for Refugee Protection Form was signed on September 19, 2012, the RPD was convinced that the Applicant should have known about all the arrests listed on the website.

(4) Summons

[16] The RPD found that "the lack of a summons or warrant undermined the claimant's allegation that he is being pursued by the PSB."

[17] The Applicant wrote in his PIF that the PSB was looking for him at his home on July 6, 2012. The PSB would have searched the Applicant's home and seized his computer and some notebooks. The Applicant testified that the PSB continued to visit his home about six times a year and also searched for him at the homes of his relatives. The RPD noted that the PSB did not

issue a summons. After reviewing the country conditions evidence, the RPD acknowledged that “the issuance of a summons varies from one locality to another”. However, the Board was of the view that the Applicant would be expected to have been issued a summons, considering that he was allegedly sought by the PSB at least five times a year following the alleged arrests of the five FG practitioners. The RPD was also of the view that an arrest warrant would have been issued if the PSB were interested in finding him.

[18] The Applicant submitted a copy of a receipt that was left at his home by the PSB for the seized items. The RPD considered the evidence, however, determined that it cannot rely on the receipt as proof of the PSB’s interest in the Applicant.

(5) Exit from China

[19] The Applicant left China using his own passport. After reviewing the objective evidence, the RPD came to the following conclusion:

I find, therefore, on a balance of probabilities, that security authorities in Dalian city, the second largest city in Liaoning Province and of the largest ports in the world, would be connected to this system [the Golden Shield Project] and if the claimant was being pursued by the PSB, information would be available to exit authorities and the claimant likely would not have been allowed to exit China using his own passport.

[20] The RPD found that the Applicant’s ability to leave China with his own passport concords with the lack of a summons in the present case.

(6) Family Situation

[21] The RPD drew a negative inference based on the evidence that the Applicant's family did not experience reprisals in China due to the Applicant's alleged FG practice. Based on the Applicant's allegation that he was sought several times a year by the PSB and the documentary evidence which states that "the PSB generally takes reprisals against family members of Falun Gong practitioners", the RPD found that the Applicant lacked credibility.

[22] The RPD also considered an article about the Applicant that was published in Canada in the Epoch Times on August 26, 2013. The RPD was concerned about the Applicant's decision to share his name and city he is from to the journalist when his family could have easily been put at risk in China. The RPD did not accept the Applicant's explanation that he did not know that the article would be published. Moreover, the Applicant alleged that the published article caused his wife to lose her job in 2014. The RPD found that it was unreasonable that the PSB would go against the Applicant's wife almost a year after the article. Therefore, the RPD found, on a balance of probabilities, that the Applicant deliberately gave his personal information to the journalist "to try to create the situation where the IRB may think that he has come to the attention of the authorities in China for being a FG practitioner in Canada."

B. *Claimant's Falun Practice in Canada*

[23] The Applicant testified that he continued to practice FG in Canada which has alerted Chinese authorities in China. The RPD found that the Applicant has a "good knowledge" of FG as he was able to answer the RPD at the hearing. Given the publication of the article in the Epoch

Times in 2013 and the Applicant's attendance at various FG events, as well as a demonstration across from the Chinese consulate, the RPD came to the conclusion that the Applicant was deliberately trying to create his own *sur place* claim in order to stay in Canada.

[24] The RPD gave very little weight to the letters of support from various practitioners because they do not corroborate the Applicant's motivation in attending FG events. The RPD concluded:

The determinative issue of this claim is the genuineness of the claimant's FG practice, as it is acknowledged that this practice is illegal in China. Based on the negative finding above, I find, on a balance of probabilities, that the claimant was not a Falun Gong practitioner in China, and is not a genuine practitioner in Canada, nor would he be perceived as such in China.

C. *Conclusion*

[25] The RPD found that the Applicant would not face a serious possibility of persecution and that, on a balance of probabilities, he would not personally be subjected to a risk to life or a risk of cruel and unusual treatment or punishment or a danger of torture upon return to China.

IV. Issues and Standard of review

[26] According to the Applicant, the present matter raises the following issues:

1. Did the RPD make unreasonable credibility findings?
2. Did the RPD err in failing to properly assess the *sur place* claim?

[27] The RPD's findings of credibility are to be reviewed on a standard of reasonableness (*Aguebor v Canada (Minister of Employment & Immigration)*, [1993] FCJ No 732, 42 ACWS (3d) 886). The RPD's decision should therefore be afforded considerable deference with regards to findings of fact and credibility determinations (*Elmi v Canada (Citizenship and Immigration)*, 2008 FC 773 at para 21). The RPD's finding on the Applicant's *sur place* claim is also to be reviewed under the standard of reasonableness as the issue raises a question of mixed fact and law (*S.A. v Canada (Citizenship and Immigration)*, 2014 FC 146 at para 21; *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 51-53 [*Dunsmuir*]).

V. Analysis

[28] The application for judicial review is dismissed.

A. *Did the RPD make unreasonable credibility findings?*

[29] Based on the evidence on file, the RPD properly considered and weighed the documents provided by the Applicant. It is within the tribunal's expertise to determine the applicant's credibility and to assess the evidence. Contrary to the Applicant's submissions regarding the RPD's consideration of the medical booklet, as well as the receipt of confiscated goods, the Court reminds that it is not the role of a reviewing court to re-weigh the evidence in the record. After carefully reviewing the entire file, the Court cannot conclude that the RPD erred in the weighing of the totality of the evidence before it.

[30] As indicated by the RPD in its reasons, the determinative issue of the refugee claim was the genuineness of the Applicant's FG practice. In finding that the Applicant was not credible, the RPD noted several discrepancies and inconsistencies in the evidence, as well as lack of credible explanations from the Applicant when asked about these discrepancies. The Court will refrain from conducting a microscopic analysis of the RPD's assessment and credibility findings, however, it is important to highlight some of the main concerns of the RPD.

[31] The RPD found it unusual and therefore not credible that the Applicant would be willing to travel to many countries outside China to look into cooking schools, considering he had just been employed as a new teacher at the school and considering his medical condition.

[32] The Applicant was unable to explain how he was able to travel such distances while experiencing severe pain due to sciatica. When confronted about this issue, the Applicant's response was that he did not feel much pain during his travels. The RPD therefore drew a negative inference from the discrepancies between the Applicant's PIF and his testimony.

Q. In your personal information from narrative you said that you – in July you started suffering from sciatica – oh, 2012 .. '11.

A. Yes, I suffered from that sciatica. Are you talking about – did you say December 2012?

Q. No. I meant to say July 2012. I hope I said that.

A. That's correct.

Q. But you travelled and you say in your PIF that in the beginning of December 2011 that your pain became severe. So how were you able to travel to South Africa?

A. The pain became deteriorating after I came back from my trip.

Q. So how was the pain in South Africa?

A. At that time I didn't feel much.

Q. Well, you say in your PIF that in early December 2011 the pain became severe. You returned, according to your PIF, on the 2nd of December. So how – can you tell me about that?

A. I didn't feel much pain while I was travelling. Because of the long hours of sitting in the flight, that the pain became worse.

[33] The Court finds no error was committed by the Member of the RPD in considering the responses that were given by the Applicant at the hearing in light of the evidence on file, namely the PIF that was before the panel.

[34] The RPD next considered the Applicant's previous history with the Canadian and American immigration authorities. The RPD found that the Applicant's willingness to lie and mislead the authorities with fraudulent documents undermined his credibility. The Applicant was first asked about his work visa in Canada. The Applicant admitted that part of the information in his application was incorrect. He also explained that he was not involved in the filing of his own work application. The RPD did not find this explanation to be credible.

Q. When did you apply for a work visa in Canada?

A. In 2011.

Q. And I understand it was refused.

A. Yes.

Q. Was everything in your application true for your worker's visa?

A. I read the content in the form and my resume and my education history was not correct.

Q. And why did you sign the form if it wasn't correct?

A. I didn't realize the mistake when I signed the document. I only learned about it after I came to Canada and that was advised by my lawyer.

Q. Who filled out the form for you – the application form?

A. I don't know who did it. I submitted all my documents to the head of my school and he might have found someone who did it.

Q. And why does your – head of your school, why were they interested in you going to Canada?

A. Because this is the arrangement by the school. It's not my personal application.

[35] The Court finds that it was reasonable for the RPD to find that the Applicant signed his personal work application and therefore bears the responsibility for its contents. The Court also agrees with the RPD in finding that it did not make sense to have the "head of the school" assist the Applicant in filing his application to possibly work in Canada when he had only been employed at the school for two years.

[36] The RPD raised further credibility concerns with regards to the evidence provided by the Applicant about the alleged arrests of FG practitioners. After questioning the Applicant about the day he found out about these arrests, the Member of the RPD noted some inconsistencies between the Applicant's testimony and his PIF.

Q. And how did you find out that these were the names?

A. My wife told me.

Q. And how did she find out?

A. She asked Sun Yun's husband, who told her.

Q. So were these all arrested before she gave you her first call?

A. I'm not sure about that. When she made the first phone call I only learned that Sun Yun was arrested.

Q. And when did you find out the others were arrested?

A. I learned about that later.

Q. When is later?

A. After I came to Canada.

Q. The way the PIF reads it seems that you learned about the arrests of these five people while you were in hiding.

A. Canada also is considered hiding.

Q. The way your PIF reads it says "I also learned that beginning on July 5th, 2012 the PSB arrested many Falun Gong practitioners from different groups across Dalian City."

A. I learned about that after I came to Canada when I logged onto the internet and read the news in the Minghui website.

[...]

Q. So did you find out this – in what year did you find out about the arrests?

A. In August 2012.

[...]

Q. When did you arrive in Toronto?

A. August the 6th, 2012.

Q. And the very next day you went to an internet bar?

A. Yes.

Q. In the claim that you filled out on [...] the 19th of September 2012, claim for refugee protection form you filled out, and which was signed September 12th – September 19th, 2012 you indicate four people were arrested.

A. Yes.

Q. Why is that?

A. At the time the knowledge I had was four people, but later on I learned that there was one more arrest.

Q. How did you learn about the one more?

A. It was told by my wife.

Q. Weren't all five listed in the article – the internet article?

A. Yes.

Q. So why didn't you say five then?

A. Because I was not sure. There are a lot of people bearing the same name.

[37] The Court is of the view that the RPD did not err in drawing a negative inference from the responses that were given by the Applicant at the hearing. The website clearly indicated that there were five arrests and the Applicant allegedly viewed this website in August of 2012, after arriving in Canada. It was therefore reasonable for the RPD to determine that the Applicant's failure to mention all five arrests in his claim for refugee protection filed in September of 2012, and after viewing the website, undermined his credibility.

[38] The RPD next found that the lack of a summons or arrest warrant undermined the Applicant's allegation that he was being sought by the PSB. In his written submissions, the Applicant refers to a few decisions in which this Court has frequently told the Boards "about the dangers of drawing adverse credibility inferences on the basis of expectations about what Chinese authorities are likely to do, or on an assumption that law enforcement practices will be consistently uniform": *Weng v Canada (MCI)*, (25 October 2012), Ottawa IMM-1536-12 (FC), at para 6; *Liang v Canada (Minister of Citizenship and Immigration)*, 2011 FC 65; *Chen v Canada (Minister of Citizenship and Immigration)*, 2012 FC 545.

[39] The Court is of the view that every case is unique and therefore “must be assessed based on the evidence before the Board and its assessment of that evidence.” (*Jiang v Canada (Citizenship and Immigration)*, 2012 FC 1067 at para 21 [*Jiang*]). Based on the country conditions on China with regards to the issuance of a summons by the PSB, it may very well be that the RPD erred in finding that the lack of a summons undermined the Applicant’s credibility because the PSB returned to the Applicant’s home at least five times after their first visit. However, as it was determined by Justice Mosley in *Lin v Canada (Minister of Citizenship and Immigration)*, 2012 FC 671, at paragraph 10, the Court is also convinced that, in any case, “this one inference was not determinative and is not sufficient to render the entire decision unreasonable.”

[40] Based on the RPD’s several credibility concerns, the Court finds that the RPD did not commit an error in reaching its decision as there are no reliable and independent documentary evidence on record to rebut it (*Calderon v Canada (Citizenship and Immigration)*, 2014 FC 557 at para 27). The Court is convinced that the RPD provided clear and adequate reasons and reasonably made findings based on implausibility, common sense and rationality (*Kiyarath v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1269 at para 14).

[41] The Court finds that the RPD reasonably found that the Applicant lacked general credibility. It is reminded that the RPD’s credibility findings are to be afforded considerable deference. The Applicant was unable to demonstrate how the Board’s decision does not fall within the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir* at para 47).

B. *Did the RPD err in failing to properly assess the sur place claim?*

[42] Based on the evidence on record, the RPD reasonably found that the Applicant was not a genuine FG practitioner, in China *and* in Canada. While the Court does not necessarily agree with the RPD’s finding that the Applicant should have hidden his identity by putting on “sunglasses” or wearing a “hat” while he attended public FG events in Canada, it was nonetheless reasonable for the panel to conclude that there was no credible evidence to indicate that the Applicant would be persecuted by the PSB in China for his FG practice and public activities in Canada. In any case, the RPD had already found that the Applicant was never wanted by the Chinese authorities for allegedly being a FG practitioner in China. Therefore, it was reasonable to consider that the Chinese authorities would not accuse the Applicant, upon his return to China, of engaging in an illegal practice in Canada. In light of the RPD’s credibility concerns with regards to the Applicant’s fraudulent claim, “the Board must be entitled to import its credibility findings into its assessment of an applicant’s sur place claim” (*Jiang* at para 27).

[43] The Court finds that the RPD’s decision is reasonable.

VI. Conclusion

[44] The application for judicial review is dismissed. No question of general importance will be certified.

JUDGMENT in IMM-2581-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance will be certified.
3. There is no order for costs.

“Paul Favel”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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