

Federal Court



Cour fédérale

Date: 20190523

Docket: IMM-3033-18

Citation: 2019 FC 728

Ottawa, Ontario, May 23, 2019

PRESENT: Mr. Justice James W. O'Reilly

BETWEEN:

**JIANCHU HE
YUZHEN XIAO
ZICONG HE**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Mr Jianchu He, his wife, Ms Yuzhen Xiao, and their son, Zicong He, sought refugee protection in Canada based on their fear of persecution in China. They claim to be sought by the Public Security Bureau (PSB) after Mr He protested against allegedly corrupt government officials who expropriated his property.

[2] A panel of the Refugee Appeal Division (RAD) upheld a previous decision of the Refugee Protection Division (RPD) dismissing the applicants' claim for a lack of credible evidence. The RPD had doubted Mr He's testimony because he failed to provide evidence regarding the applicants' travel to Canada, did not produce a summons from the PSB, claimed that the applicants left China on their own passports without difficulty, and lacked evidence corroborating the expropriation.

[3] The applicants contend that the RAD unreasonably upheld the RPD's credibility findings. They also argue that the RAD failed to consider documentary evidence about the treatment of people in China who protest expropriations. They ask me to quash the RAD's decision and order another panel to reconsider their claim.

[4] I can find no basis for overturning the RAD's decision. Its conclusions were not unreasonable on the evidence before it. Further, since the RAD concluded that the applicants had not been involved in a protest against an expropriation, it was not obliged to review documentary evidence about the treatment of those who were.

[5] There are two issues:

1. Were the RAD's credibility findings unreasonable?
2. Should the RAD have considered documentary evidence about protesters?

II. Issue One – Were the RAD’s credibility findings unreasonable?

[6] The applicants submit that the RAD unreasonably expected that they would have made photocopies of their passports to confirm the details of their travel to Canada. They had explained to the RPD that their actual passports had been given to the smuggler who had arranged their travel from China to Canada. The RPD did not accept that explanation. The RAD agreed with the applicants that the RPD had engaged in speculation about what a smuggler would do with the applicants’ passports. However, the RAD went on to find that, in the circumstances, the applicants would have made photocopies of their passports.

[7] I agree with the applicants that the RAD’s expectation that they would have foreseen the need to make photocopies of their passports may not have been realistic. Further, they had produced to the RPD copies of their baggage claims and plane tickets. Accordingly, there was no real basis to question their travel history.

[8] However, there remained a reasonable basis for the RAD to dismiss the applicants’ appeal.

[9] The applicants argue that the RAD wrongly faulted them for failing to file a written summons from the PSB to confirm that they were actually being sought. They point to documentary evidence stating that PSB practices regarding summonses are inconsistent – the PSB sometimes leave a summons with a family member or friend of a suspect, but not always.

[10] Here, though, the applicants claimed that the PSB had been pursuing Mr He for over 18 months, had visited his home six times, and had shown his mother an arrest warrant. In the circumstances, the RAD found it implausible that the PSB would not have left a written summons on at least one of its visits.

[11] Given the variations in practice, it would be wrong to expect all persons claiming to be sought by the PSB to provide corroborating evidence in the form of a written summons. However, in this case, given the alleged persistence of the PSB, it was not unreasonable for the RAD to expect an applicant to produce one.

[12] The applicants also maintain that the RAD's finding that it was unlikely that they would have been able to leave China on their own passports without difficulty was unreasonable. In particular, while the RAD found that Mr He would likely have been spotted through facial recognition software, that technology, at best, would have simply found a match between Mr He's face and his passport photograph. It would not, say the applicants, have provided a link between Mr He and the PSB's wanted list.

[13] The documentary evidence indicates that facial recognition software serves to connect passengers with the images on their passports, but it is unclear whether links are made to any other databases. However, even a connection with a passport photograph would confirm to authorities who was leaving the country. The RAD reasonably concluded that if Mr He was being sought persistently by the PSB his departure would likely have been detected.

[14] In addition, the applicants dispute the RAD's finding that Mr He would have been detected by China's Advanced Passenger Information system. They point out that this system is not consistently relied on and, in any case, they had hired a smuggler who was able to help them circumvent security arrangements at the airport.

[15] The documentary evidence confirms that the Advanced Passenger Information system is not consistently applied. However, the applicants were unable to explain how their smuggler assisted them in bypassing airport security arrangements in general. Again, it was not unreasonable for the RAD to doubt the applicants' description of their departure from China.

[16] Finally on this point, the applicants challenge the RAD's findings that corruption at airports in China is insignificant, and that it is unlikely that they could successfully evade exit controls.

[17] I see no issue with the RAD's findings. The RAD acknowledged that there is some evidence that airport officials can be bribed, but found that the preponderance of the evidence showed that most airport authorities screen passengers thoroughly.

[18] The applicants also challenge the RAD's finding that they should have provided evidence corroborating Mr He's involvement in protests against expropriation. They suggest that the RAD should have taken their testimony at face value.

[19] In my view, in light of its other credibility concerns, it was not unreasonable for the RAD to consider the absence of corroborating documentary evidence in its overall credibility assessment.

[20] Taken as a whole, I cannot conclude that the RAD's credibility findings were unreasonable.

III. Issue Two – Should the RAD have considered documentary evidence about protesters?

[21] The applicants submit that the RAD unreasonably failed to consider documentary evidence showing that people who protest against expropriations in China are persecuted.

[22] I disagree. The RAD found that the applicants' claim that they were sought by the PSB because of their protests was not credible. Given that finding, it did not have to go on to consider how protesters are treated.

IV. Conclusion and Disposition

[23] The RAD's credibility findings were not unreasonable, and it had no obligation to consider documentary evidence relating to expropriation protesters. I must, therefore, dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT IN IMM-3033-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

"James W. O'Reilly"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3033-18

STYLE OF CAUSE: JIANCHU HE, YUZHEN XIAO, ZICONG HE v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 5, 2019

JUDGMENT AND REASONS: O'REILLY J.

DATED: MAY 23, 2019

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