

Federal Court



Cour fédérale

Date: 20190625

Docket: IMM-1165-18

Citation: 2019 FC 856

Ottawa, Ontario, June 25, 2019

PRESENT: Mr. Justice Norris

BETWEEN:

SHASHA SUN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The applicant, Shasha Sun, is a citizen of China. She sought refugee protection in Canada on the basis that she had a well-founded fear of persecution in China because of her involvement with the Church of the Almighty God (Eastern Lightning). The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB] rejected her claim in a decision dated June 16, 2017. The applicant appealed this decision to the Refugee Appeal

Division [RAD] of the IRB. In a decision dated February 13, 2018, the RAD dismissed the appeal and confirmed the decision of the RPD.

[2] The applicant now applies for judicial review of the RAD's decision under section 72(1) of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]* on the basis that the decision of the RAD is unreasonable.

[3] For the reasons that follow, the application for judicial review will be dismissed.

II. BACKGROUND

[4] The applicant was born in China in April 1996. She claims that in April 2014 a friend introduced her to the Almighty God (Eastern Lightning) church to help her deal with personal problems she was experiencing. The applicant began attending church activities in June 2014. She claims that a member of the church was arrested while handing out church flyers in November of the same year. The applicant claims that, after learning of this arrest, she went into hiding at a relative's house. She then decided to leave China and seek refugee protection in Canada.

[5] A smuggler assisted the applicant in obtaining a student visa for Canada in March 2015. (In December 2014, the applicant had been offered admission to the Bachelor of Hospitality and Tourism Management program at Cape Breton University.) The student visa was valid for three years. The applicant left China using her own passport. She arrived in Canada on April 17, 2015. It does not appear that she ever attended school once she was in Canada.

[6] The applicant did not begin the process of seeking refugee protection until August 2016. She submitted her claim in September 2016.

[7] The applicant alleges that the Chinese Public Security Bureau [PSB] detained the friend who had introduced her to the faith as well as the friend's husband on June 20, 2016. According to the applicant, she was told that two days later the PSB visited her house in order to arrest her. The applicant claims that she has been informed that the PSB went to her house three more times between July and November 2016. During these visits, the PSB questioned and threatened the applicant's parents and told them that the applicant must report to the PSB.

[8] The Minister intervened in the hearing before the RPD and provided written submissions relating to concerns about the applicant's credibility.

[9] The RPD was satisfied that the applicant had established her identity as a citizen of China. However, it drew several negative inferences about the applicant's credibility which were determinative of the claim for refugee protection.

[10] The RPD found that since the applicant had left China using her own passport, the PSB would have known about this. As a result, it was not credible that the PSB would have inquired of her parents about the applicant's whereabouts multiple times. The RPD also noted that the refugee claim was submitted 16 months after the applicant's arrival in Canada. The RPD considered the applicant's evidence that she had been unable to proceed with the claim because she was suffering from a depressive disorder but did not find it a satisfactory explanation for the

delay. The RPD was also not persuaded by the applicant's contention that she had delayed filing her refugee claim because she feared being deported if the claim were rejected. Finally, the RPD found unclear the applicant's testimony that prayer and church attendance helped her feel well enough to file her claim. If, as some evidence suggested, the applicant had begun attending church in Canada in August 2015, it was unclear why it took another year for the applicant to feel able to proceed with her claim for protection. The significant delay in making the claim and the unsatisfactory explanations for that delay led the RPD to draw a negative inference about the applicant's credibility.

[11] The RPD also considered that the applicant had tried to obtain a student visa to the United States twice in 2013. These applications contained information which differed from the information submitted in support of her application for refugee protection in Canada in several ways. The applicant acknowledged that the information in the U.S. visa applications was false. She said that a relative had helped her fill out the forms. The RPD judged this explanation unsatisfactory. The inclusion of false information in support of an effort to obtain status in another country and the unsatisfactory explanation for this led the RPD to draw a further negative inference about the applicant's credibility.

[12] The RPD also examined the applicant's knowledge of the faith she was professing. The RPD undertook this analysis in light of the foregoing negative credibility findings. The RPD held that the applicant's basic knowledge of the faith was "insufficient to establish that she is a genuine practitioner or that she would practice the faith in China, on a balance of probabilities." The RPD assigned little weight to a letter written by an individual who had met the applicant at a

church service in Canada because the letter was neither sworn nor affirmed and due to the wider negative credibility concerns about the claim. The RPD also considered letters written by the applicant's parents and by an individual with whom the applicant claims to have stayed while in hiding. Viewed in light of the previously identified negative credibility findings, the RPD judged the letters to be insufficient to establish the genuineness of the applicant's faith or to corroborate the claim that the PSB is searching for the applicant.

[13] In summary, the RPD concluded that the applicant's credibility was weakened in several respects. As a result, the RPD determined, on a balance of probabilities, that "the Claimant was not a practitioner of the Almighty God (Eastern Lightning) faith in China, the PSB are not interested in the Claimant's whereabouts, and the Claimant's practice with the Church of the Almighty God in Canada is not genuine." Based on these findings, the RPD concluded that the applicant is neither a Convention refugee nor a person in need of protection.

III. DECISION UNDER REVIEW

[14] The applicant appealed the decision of the RPD to the RAD, principally on the basis of alleged errors by the RPD in assessing the applicant's credibility. Specifically, the applicant contended that the RPD had erred in drawing negative credibility inferences in relation to the PSB's alleged interest in the applicant, the delay in making the claim, the incorrect information in the United States student visa applications, and the *sur place* claim.

[15] The applicant did not seek to file any new evidence in support of her appeal, nor did she request a hearing before the RAD.

[16] The Minister did not participate in the appeal.

[17] In his reasons for dismissing the appeal, the RAD member instructed himself in accordance with the decision of the Federal Court of Appeal in *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 [*Huruglica*] as well as the decision of the three member RAD panel in *X (Re)*, 2017 CanLII 33034 (CA IRB). As the member understood these authorities, with respect to findings of fact and mixed fact and law he was “to review the RPD decisions applying the correctness standard. Thus, after carefully considering the RPD’s decision, the RAD carries out its own analysis of the record to determine whether, as submitted by the Appellant, the RPD erred.” While the member does not say so expressly, it must be presumed that he also followed the direction of the Federal Court of Appeal in *Huruglica* (as elaborated upon by the three member panel of the RAD) that the RAD will normally apply a standard of correctness to all the findings of the RPD but where the RPD enjoys a meaningful advantage over the RAD in making a particular factual finding, the RAD may assess that finding using a standard of reasonableness, modified to suit the RAD context. That being said, none of the grounds of appeal were determined on the basis of deference to the RPD’s findings.

[18] The RAD dismissed the appeal for the following reasons.

[19] First, the RAD considered the credibility of the applicant’s claim that the PSB is seeking to arrest her. The RAD considered the PSB’s investigative practices and China’s surveillance apparatus. This led the RAD to find that the PSB would have become more aggressive on each visit rather than always acting in the same manner, as alleged by the applicant. Further, the RAD

noted the extensive efforts made by China to crack down on the Almighty God (Eastern Lightning) faith. The RAD found that the applicant's testimony is inconsistent with actual PSB practices. The RAD therefore affirmed the RPD's negative credibility inference on this issue.

[20] Second, the RAD considered the applicant's explanation that her psychological condition explained the delay in submitting her claim for refugee protection. As the RAD understood, the applicant contended that her psychological issues prevented her from thinking clearly and making decisions. The RAD determined that the applicant's conduct – including coming to Canada with the specific purpose of seeking refugee protection – was inconsistent with this. Further, the RAD noted that, according to the psychological report submitted by the applicant, many of the symptoms arose months after the applicant's arrival in Canada. Even if the applicant had trouble adjusting to life in Canada, this did not explain why she did not seek refugee protection immediately, as she says she intended to do. The RAD also held that the applicant's failure to mention in her Basis of Claim [BOC] that she had spoken to an immigration consultant long before submitting her claim for protection “significantly undermines the credibility of her explanation” for the delay in submitting her claim. Finally, the RAD held that fear of deportation was an inadequate explanation for the significant delay in this case. The RAD thus upheld the negative credibility inference drawn by the RPD.

[21] Third, the RAD considered that the applicant had submitted false information when she applied for visas to study in the United States. The RAD also considered the explanation provided by the applicant that she was a minor at the time and that a family member had filled out the forms. The RAD noted, however, that the applications were submitted when the

applicant was seventeen or eighteen years old. Further, the RAD noted that the applicant had used a smuggler to help her obtain a Canadian student visa. The RAD agreed with the RPD that the applicant's actions demonstrated a willingness to submit false information in support of an effort to obtain immigration status in another country. As with the RPD, these findings led the RAD to draw a negative credibility inference.

[22] Fourth, the RAD considered the letter submitted by a member of the applicant's church in Canada. The RAD found that the letter provided little support for the applicant's claim. The letter was inconsistent with the applicant's own testimony about how often she attended church. The letter says nothing about the applicant's faith other than her attendance at church. Finally, the RAD noted that the applicant only began attending church in Canada after meeting with the immigration consultant. The RAD also considered the applicant's argument that her attendance at church and the letter of support from the church member demonstrated the genuineness of her faith. The RAD found this argument unpersuasive because of the credibility concerns outlined above. The RAD reiterated the negative credibility findings in connection with the *sur place* claim. The RAD concluded that the applicant is not, on a balance of probabilities, a practitioner of the faith.

[23] In summary, the RAD found that there was insufficient evidence to establish that the applicant was a member of the Almighty God (Eastern Lightning) church in China, that she was wanted in China because of her practice of the faith, or that the Chinese government is aware of the applicant's practice of the faith in Canada. The RAD thus concluded that "there is not a serious possibility of persecution for the Appellant, nor would she be subjected personally, on a

balance of probabilities, to a risk to life, a risk of cruel and unusual treatment or punishment, or a danger of torture, should she return to China.” Accordingly, the RAD dismissed the appeal and confirmed the RPD’s decision.

IV. STANDARD OF REVIEW

[24] The RAD’s determinations of factual issues and issues of mixed fact and law are reviewed on a reasonableness standard (*Huruglica* at para 35). This includes the RAD’s credibility findings and its assessment of the RPD’s credibility findings (*Koffi v Canada (Citizenship and Immigration)*, 2016 FC 4 at para 27).

[25] 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). That is to say, the reviewing court must look at both the outcome and the reasons that are given for that outcome (*Delta Air Lines Inc v Lukács*, 2018 SCC 2 at para 27). 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 [*Khosa*]).

V. ISSUE

[26] The applicant challenges the decision of the RAD on several grounds but together they come down to the contention that the decision is unreasonable.

VI. ANALYSIS

[27] In my view, none of the specific grounds upon which the applicant challenges the decision of the RAD can succeed.

[28] First, the applicant contends that it was unreasonable for the RAD to find that the evidence was insufficient to establish the genuineness of her faith. I do not agree. The RAD considered the applicant's church attendance in Canada, her basic knowledge of the faith, and the letter from a fellow congregant. The RAD assessed this evidence in light of the credibility concerns it identified. The RAD provided a sufficient explanation for its conclusions that is grounded in the evidence. Put simply, the applicant is asking me to re-weigh the evidence considered by the RAD. This is not something I am permitted to do (*Khosa* at paras 59 and 61).

[29] Second, the applicant contends that it was unreasonable for the RAD to draw a negative inference from the applicant's delay in submitting her claim for refugee protection. As I have discussed elsewhere (see *Chen v Canada (Citizenship and Immigration)*, 2019 FC 334 at

para 24), delay in seeking refugee protection when one is able to do so can be probative of the credibility of the claimant's assertion that he or she fears persecution in the country of reference. When a claimant has not sought refugee protection at the first reasonable opportunity, the decision-maker must consider why not when assessing the significance of this fact. Here, the RAD (like the RPD before it) did just that. The applicant's evidence was that her only reason for coming to Canada was to claim refugee protection yet she waited 16 months before doing so. The RAD found the applicant's explanation for this delay wanting and, on this basis, drew a negative inference about the credibility of the claim. This is a reasonable conclusion which is defensible in respect of the facts and the law. In challenging the decision, the applicant is again effectively asking me to re-weigh the evidence and reach a different conclusion. The applicant obviously disagrees with the RAD's conclusion but she has not demonstrated that it is unreasonable.

[30] Third, the applicant contends that the RAD erred in failing to consider that her attendance at church in Canada before she made her claim for refugee protection showed the genuineness of her alleged faith. The probative value of the evidence of the applicant's attendance at church was for the RAD to determine. I agree with the applicant that the evidence does not reasonably support the RAD's conclusion that the applicant only began attending church in Canada after she had consulted with an immigration consultant about making a refugee claim. The applicant testified that this consultation occurred in about October 2015 but there was evidence she was already attending church prior to that (albeit infrequently). Nevertheless, there are other grounds upon which the RAD reasonably had concerns about the applicant's credibility. It was not

unreasonable for the RAD to assess the sincerity of the applicant's religious practices in Canada in light of these concerns.

[31] Fourth, the applicant contends that the RAD failed to address whether the Almighty God (Eastern Lightning) faith can be freely practiced in China. I do not agree. In fact, the RAD stated that "the objective evidence makes it clear that Chinese authorities view adherents of the Church of Almighty God as members of a cult." The RAD went on to describe the efforts made by Chinese security services to crack down on the Almighty God faith.

[32] Finally, the applicant contends that the RAD failed to conduct an independent assessment of the claim. The applicant is correct that the RAD must conduct an independent analysis. As Justice Diner observed in *Jeyaseelan v Canada (Citizenship and Immigration)*, 2017 FC 278, "[a]n overly obsequious support for and reinforcement of all RPD findings can bring into question the independence of the RAD's analysis" (para 19).

[33] As set out above, the RAD member instructed himself in light of *Huruglica* and the ensuing three member RAD panel decision. The applicant has not persuaded me that the member failed to carry out the independent analysis he understood he was required to conduct. The member considered the applicant's arguments that the RPD had erred in making numerous negative credibility findings. Rather than simply confirming the RPD's findings, the member undertook his own analysis of each adverse credibility finding. The member examined the record, the applicant's testimony, the available documentary evidence, and the applicant's arguments on the appeal. I am satisfied that the RAD's agreement with the RPD's negative

credibility findings was based on its own independent assessment. This ground of review must therefore fail.

VII. CONCLUSION

[34] For these reasons, the application for judicial review will be dismissed.

[35] The parties did not suggest any serious questions of general importance for certification under section 74(d) of the *IRPA*. I agree that none arise.

JUDGMENT IN IMM-1165-18

THIS COURT'S JUDGMENT is that

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

“John Norris”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

Hart A. Kaminker

FOR THE APPLICANT

Asha Gafar

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Kaminker and Associates
Barristers and Solicitors
Toronto, Ontario

FOR THE APPLICANT

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT