

Federal Court



Cour fédérale

Date: 20190709

Docket: IMM-5351-18

Citation: 2019 FC 904

Vancouver, British Columbia, July 9, 2019

PRESENT: Madam Justice Strickland

BETWEEN:

ZHONG ZHENG

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board which found that the Applicant is not a Convention refugee or person in need of protection pursuant to ss 96 and 97, respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

Background

[2] The Applicant, Zhong Zheng, is a citizen of China. He claims that he joined a Falun Gong practice group in August 2010 when Western and Chinese medicine had failed to relieve his headaches and dizziness. He came to Canada to study in November of 2011. Here he continued to practice Falun Gong and also shared details of his practice by telephone with his aunt and another individual in China. They, in turn, shared this information with other members of the Applicant's underground Falun Gong group.

[3] On December 5, 2012, the Public Security Bureau [PSB] raided that group and arrested two of its members. On December 7, 2012, the PSB went to the home of the Applicant's parents and told them that the Applicant was a member of an illegal cult and ordered that he return to China and turn himself over to the authorities. The PSB returned to his parents' home on December 28, 2011 and, at that time, told his parents that the Applicant had also sent Falun Gong information from abroad.

Decision Under Review

[4] The RPD asked the Applicant if he had any medical documentation to corroborate his visits to Western and Chinese medical practitioners. It did not accept his explanations as to why he did not, including that his mother had looked for the documentation but it had been lost. When asked if he had made efforts to obtain medical documentation when he prepared his Personal Information Form [PIF] in 2013, the Applicant stated that he was not aware that this was necessary. The RPD rejected this explanation because the PIF, which the Applicant had confirmed under oath had been translated to him, indicated that he was to provide all

documentation central to his claim. The RPD drew a negative inference from the lack of documentation, which the RPD concluded was reasonably available to the Applicant when he made his claim.

[5] The RPD also drew a negative credibility inference based on the lack of a summons or arrest warrant. The RPD acknowledged that the country documentation evidence indicated that the PSB's practice of issuing a summons or warrant varied from one location to another. However, it concluded that given the multiple PSB visits described by the Applicant and the arrest of his co-practitioners, the PSB had demonstrated a significant interest in the Applicant and, on a balance of probabilities, it was reasonable to expect that the authorities in Fuqing, Fujin province, a large metropolitan centre, would have issued and left a summons with his family (*Zhang v Canada (Citizenship and Immigration)*, 2011 FC 654 [*Zhang*]; *Lin v Canada (Citizenship and Immigration)*, 2012 FC 1200 [*Lin*], and *Cao v Canada (Citizenship and Immigration)*, 2012 FC 1398 [*Cao*]). Based on these findings, the RPD determined that there was insufficient credible evidence to support a finding that the Applicant was a Falun Gong practitioner in China who was being pursued by the PSB.

[6] Also on the basis of these findings and the totality of the evidence (*Jiang v Canada (Citizenship and Immigration)*, 2012 FC 1067; *Zhou v Canada (Citizenship and Immigration)*, 2015 FC 5), the RPD rejected the Applicant's *sur place* claim. It found that the Applicant had not met his burden of demonstrating that he was now a genuine practitioner in Canada. Although the Applicant had, when questioned, demonstrated some knowledge of Falun Gong, the RPD ultimately concluded that this knowledge reflected an effort to support a fraudulent claim.

[7] As to the Applicant's claim that the PSB was aware that he had sent Falun Gong material from a foreign place and had thereby assisted Falun Gong practitioners, the RPD found that this would not result in persecution or the harms pursuant to subsection 97(1) of the IRPA (*Gong v Canada (Citizenship and Immigration)*, 2008 FC 600).

[8] The RPD dismissed the Applicant's claim.

Issues and Standard of Review

[9] The sole issue in this application for judicial review is whether the RPD's decision was reasonable.

[10] The standard of review applicable to credibility findings of the RPD is reasonableness (*Gaprindashvili v Canada (Citizenship and Immigration)*, 2019 FC 583 at para 20

[*Gaprindashvili*]; *Behary v Canada (Citizenship and Immigration)*, 2015 FC 794 at para 7; *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at para 22 (*Rahal*); *Aguebor v Canada (Employment and Immigration)*, [1993] FCJ No 732 at para 4, 160 NR 315 (FCA)). Such determinations lie within the heartland of the RPD's discretion, and, as such, are entitled to considerable deference (*Siad v Canada (Secretary of State)*, [1997] 1 FC 608; *Chen v Canada (Citizenship and Immigration)*, 2017 FC 539 at para 19 [*Chen*]). The determination of a *sur place* claim is also reviewable on the reasonableness standard (*Chen* at para 19).

[11] The reasonableness standard is concerned with justification, transparency and intelligibility within the decision-making process as well as 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).

Analysis

Summons and medical records

[12] The Applicant submits that the only basis upon which the RPD questioned his credibility was related to the absence of a summons and arrest warrant. However, the RPD's finding in that regard was an unreasonable plausibility finding and, therefore, it was not sufficient to open the door to permit the RPD to draw a negative inference from the Applicant's failure to provide corroborative evidence. As to the RPD's conclusion concerning the lack of a summons or arrest warrant, the Applicant relies on the statement in *Wang v Canada (Citizenship and Immigration)*, 2018 FC 1124, that "This Court has cautioned decision-makers against 'drawing adverse credibility inferences on the basis of expectations about what Chinese authorities are likely to do, or an assumption that law enforcement practices will be consistently uniform'" (at para 39, also see paras 42–43).

[13] In addressing this submission, I first note that this Court has also previously found that negative credibility findings based on the absence of an arrest warrant may be reasonable when reviewed in the overall context of an applicant's evidence and when, as in this matter, the RPD has acknowledged the mixed evidence as to the PSB's practise regarding the issuance of summonses and arrest warrants (*Cao v Canada (Citizenship and Immigration)*, 2015 FC 790 at para 47; *Ni v Canada (Citizenship and Immigration)*, 2018 FC 948 at paras 19–21; *Huang v Canada (Citizenship and Immigration)*, 2017 FC 1193 at para 9); *Huang v Canada (Citizenship and Immigration)*, 2019 FC 148 at paras 28–31).

[14] Here the Applicant claimed that the PSB went to his house on more than one occasion looking for him and that two other members of his Falun Gong group had been arrested. The transcript of his testimony also indicates that he claimed that the PSB had extensively searched his home and had possibly put it under surveillance. The Applicant testified that he assumed that there must have been a search warrant but he did not have a copy, suggesting that his mother was very frightened after the search and had thrown away lots of documents because it would be dangerous if people learned about his situation. I also note that his PIF indicates that the PSB sought to arrest his aunt, who was in hiding, as well as one of the members of his underground Falun Gong group whom the Applicant had had spoken to from Canada by phone. The RPD considered the evidence as representative of the PSB's interest in the Applicant. It also considered where in China the Applicant's parents live. And, further, that the Applicant pointed to no evidence submitted by him to suggest that the PSB practice in that province was not to leave a summons or arrest warrant. Viewed in context, the RPD's negative credibility inference was open to it.

[15] The Applicant also submits that the RPD erred by drawing a negative inference from the absence of corroborating medical records without identifying any contradictions or inconsistencies in his evidence.

[16] I recently addressed the issue of credibility and corroborative evidence in *Luo v Canada (Citizenship and Immigration)*, 2019 FC 823, in which I stated as follows:

[18] The second point concerns credibility and corroborative evidence. This is an issue that has been addressed many times by this Court, including my decision in *Ismaili* (at paras 31-55), Justice Kane's decision in *Guyen* (at paras 35-38), and the jurisprudence cited in those decisions. In short, it is beyond dispute that the onus is always on the claimant to prove his or her claim

(*Ismaili* at para 32; *Samseen v Canada (Citizenship and Immigration)*, 2006 FC 542). This is also reflected in Rule 11 of the *Refugee Protection Division Rules*, SOR/2112-256, which states that claimants must provide acceptable documents establishing their identity and other elements of their claims and, if they do not, they must explain why the documents were not provided and what steps they took to obtain them.

[19] However, when a refugee claimant swears to the truth of certain allegations, there is a presumption that those allegations are true unless there is a reason to doubt their *truthfulness* (*Maldonado v Canada (Employment and Immigration)*, [1980] 2 FC 302 (FCA) [*Maldonado*]; also see *He v Canada (Citizenship and Immigration)*, 2019 FC 2 at paras 22-25 [He]). This is because, for example, a refugee may have been forced to flee their home on little or no notice, taking little or nothing with them, and such circumstances of flight render it impossible or unreasonable to expect them to provide supporting documentary evidence. Thus, there is no general requirement that a claimant provide corroborating documents.

[20] Accordingly, it has been held that it is an error to make an adverse credibility finding solely on the basis of the absence of corroborative evidence (He at paras 22, 24; *Guyen* at para 37; and *Ismaili* at para 53). However, where there is a valid reason to doubt the claimant's credibility or where the claimant's story is implausible, the lack of documentary evidence can be a valid consideration for the purposes of assessing credibility if the applicant is unable to provide a reasonable explanation for the lack of corroborative evidence (*Guyen* at para 38; *Ismaili* at para 36). The RPD is entitled to take into account a claimant's lack of effort to obtain corroborative evidence to establish the elements of their claim and to draw a negative inference from this (*Ismaili* at para 33).

[21] Other jurisprudence has found that there is an exception to, or distinction from, the *Maldonado* principle of truthfulness in that a decision-maker may draw an adverse inference regarding a claimant's testimony if he or she fails to produce evidence that the decision-maker reasonably expects should be available in the claimant's circumstances, and the claimant does not provide a reasonable explanation for failing to produce that evidence (*Murugesu v Canada (Citizenship and Immigration)*, 2016 FC 819 at para 30; *Radics v Canada (Citizenship and Immigration)*, 2014 FC 110 at paras 30-32 [*Radics*]; also see *Tellez Picon v Canada (Citizenship and Immigration)*, 2010 FC 129 at para 12; *Ryan v*

Canada (Citizenship and Immigration), 2012 FC 816 at para 19; *Rojas v Canada (Citizenship and Immigration)*, 2011 FC 849 at para 6 [*Rojas*]; *Ding v Canada (Citizenship and Immigration)*, 2014 FC 820 at para 15; *Lakatos v Canada (Citizenship and Immigration)*, 2014 FC 785 at para 26; *Mowloughi v Canada (Citizenship and Immigration)*, 2019 FC 270 at para 65; *Delosevic v Canada (Citizenship and Immigration)*, 2012 FC 831 at para 14; *Jin v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 359 at para 28). That is, a failure to provide corroborating documentation is only a proper consideration for the decision-maker, in this case the RPD, where there are valid reasons to doubt a claimant's credibility, or, where the decision-maker does not accept the claimant's explanation for failing to produce documentary evidence when it would be reasonably expected to be available (*Radics* at para 30). In that circumstance, "precision was required as to the nature of the documentation expected and a finding made to that effect" (*Rojas* at para 6).

[22] Whether corroborative evidence can reasonably be demanded depends upon the facts of each case (*Lopera v Canada (Citizenship and Immigration)*, 2011 FC 653 at para 31).

[17] Given the RPD's negative credibility finding as to the lack of a summons or arrest warrant, which I have found to be reasonable, there was a valid reason for the RPD to doubt the Applicant's credibility. Therefore, when assessing his credibility, it was open to the RPD to consider the lack of documentary evidence, the medical reports, to support the central aspect of the Applicant's claim.

[18] The RPD also did not accept the Applicant's explanations as to why he did not provide the medical documents, or that he had made reasonable efforts to obtain such documents. Specifically, the Applicant testified he had medical documentation confirming his visits to doctors but they had been lost. When asked if he had a medical booklet, he again stated that it was lost. When asked if he made any effort to get documentation about his illness, he said his mother could not find any documents. When asked if he had tried to contact the doctors who

treated him, he stated that it was too long ago and the doctors had left their posts and he could not locate them. When asked if he tried to contact both the Chinese and Western doctors who treated him, he stated that his mother went to the hospital but too much time had passed and there were no records left nor could his mother find the Chinese and Western medical practitioners who treated him. He said his mother tried her best, but could not find anybody. When asked if he himself had made efforts to get copies of the medical documentation, the Applicant testified that it was just a few days before the hearing that he was informed that those were essential documents for the hearing, but too much time had passed and the documents were not available. When the RPD pointed out that the Applicant had completed his PIF in 2013, which had been translated to him and which indicated that he must provide all documents essential to the hearing, the Applicant responded that school was very important to him so he didn't pay too much attention.

[19] Considering this testimony, in my view, it was also open to the RPD to consider the Applicant's lack of effort to obtain corroborative evidence and, to draw a negative inference from this. It was also open to the RPD to disbelieve the Applicant's explanation of why such records were not available.

[20] In the result, and given that there was no other supporting documentation, it was within the range of reasonable outcomes for the RPD to find that the Applicant had failed meet his onus to proving that he practiced Falun Gong in China and was being pursued by the PSB.

Sur place claim

[21] The Applicant also submits that the RPD erred in assessing his *sur place* claim. He claims that the RPD did not assess his Falun Gong activities to determine if he had become a genuine practitioner in Canada. Rather, it performed a cursory assessment which was limited to his knowledge of Falun Gong. In essence, the Applicant claims that the RPD found that he was not a genuine Falun Gong practitioner in Canada because he was not a Falun Gong practitioner in China. However, the RPD was required to consider the full context of the Applicant's *sur place* claim and erred by failing to do so (*Chen v Canada (Citizenship and Immigration)*, 2014 FC 749 [*Chen*]; *Huang v Canada (Citizenship and Immigration)*, 2012 FC 205 at para 32 [*Huang*]).

[22] The Applicant is correct that the RPD was required to consider the Applicant's religious practice in Canada when assessing a *sur place* claim (*Chen* at para 58; *Huang* at para 32). However, I am satisfied that it did so. While the RPD's assessment was not detailed, in my view, this is a reflection of the evidence that was before it. There was nothing other than the Applicant's written and oral testimony speaking to his Falun Gong practice in Canada. He provided no details of where he practised or with whom, and offered no supporting affidavits or letters from those persons or any other evidence to support his claim.

[23] The Applicant also submits that, on the basis of its prior negative credibility findings, the RPD found that the Applicant's evidence was insufficient to establish the Applicant's claim. However, that it was not open to the RPD to import its prior negative credibility findings into its analysis of the Applicant's *sur place* claim. He submits that the RPD failed to consider that negative credibility findings can only be imported into an assessment of a *sur place* claim when

the findings are so serious as to put a claimant's overall credibility into question, relying on *Jiang* (at paras 7–28), *Hou v Canada (Citizenship and Immigration)*, 2012 FC 993, at para 57 [*Hou*]; and *Yang v Canada (Citizenship & Immigration)*, 2012 FC 849, at para 19 [*Yang*], as support for that proposition.

[24] However, a review of those decisions does not support that they stand for this. The relevant paragraphs in *Jiang* are as follows:

[26] The real question is whether the Board was entitled to, and reasonably imported its findings in relation to the fraudulent claim into the applicant's *sur place* claim, namely to impute that the applicant was not a genuine Falun Gong practitioner.

[27] In my view, the Board must be entitled to import its credibility findings into its assessment of an applicant's *sur place* claim. The Board here found that the applicant had fabricated her story to claim refugee protection. A reasonable inference from that premise is that her current knowledge, appearance in photos, and letters of support were fostered in the intervening two years to support that fraudulent claim.

[28] This Court has held that it is permissible for the Board to assess an applicant's genuineness and therefore its *sur place* claim in light of credibility concerns relating to the original authenticity of a claim: *Hou v Canada (Minister of Citizenship and Immigration)*, 2012 FC 993, at para 57; *Yang v Canada (Minister of Citizenship & Immigration)*, 2012 FC 849, at para 19.

[25] In my view, *Jiang* clearly supports that the RPD in this case did not err by importing its negative credibility findings into its *sur place* claim assessment.

[26] In *Hou*, the Court stated:

[57] Dealing first with the nature of the Board's questioning, on the facts of this case, the Board had good reason to question the applicant's sincerity, given his utter lack of credibility with respect to what he claimed had transpired in China and the unconvincing explanations he gave when he tried to explain the inconsistencies

that the Board drew to his attention. In light of the problems with the applicant's credibility, it was reasonable for the Board to carefully scrutinize the applicant's *sur place* claim. In addition, the applicant made specific allegations with regard to the way in which he practiced his faith and claimed to have read Zhuan Falun on a weekly basis for several years in China, and then on a daily basis since having arrived in Canada. Given this level of alleged study and the other aspects of the applicant's evidence, the Board's questioning of the applicant regarding his knowledge of Falun Gong was appropriate.

[27] And, in *Yang*:

[19] I therefore agree with the applicant that the Board erred by referring to a "good faith" requirement for *sur place* refugee claims and its decision would be unreasonable if it had been made on that basis. However, the Board's reasons as a whole can be interpreted as finding, based on numerous credibility concerns, that the applicant is not a genuine Christian. In other words, the Board did not reject the claim because the applicant converted for an illegitimate purpose; rather, the Board rejected the claim because she never really converted, but rather attended a church in Canada to support her refugee claim. In my view, therefore, the Board's error was not material to its conclusion and this aspect of its decision is reasonable.

[28] These paragraphs simply describe the nature of the negative credibility findings made in those cases. They do not, as the Applicant submits, conclude that negative credibility findings can only be imported into an assessment of a *sur place* claim when the findings are so serious as to put a claimant's overall credibility into question.

[29] For the above reasons, I find that the RPD's *sur place* finding, and its decision in whole, to be reasonable.

JUDGMENT in IMM-5351-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance for certification was proposed or arises.
3. There shall be no order as to costs.

“Cecily Y. Strickland”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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