

Federal Court



Cour fédérale

Date: 20190626

Docket: IMM-4285-18

Citation: 2019 FC 858

Ottawa, Ontario, June 26, 2019

PRESENT: Madam Justice Walker

BETWEEN:

XURAN HAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Xuran Han, seeks judicial review of a decision (Decision) of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada dated August 7, 2018. The RAD dismissed the Applicant's appeal of a decision of the Refugee Protection Division (RPD) and confirmed the RPD's decision that she was neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection*

Act, SC 2001, c 27 (IRPA). The application for judicial review is brought pursuant to subsection 72(1) of the IRPA.

[2] For the reasons that follow, the application will be dismissed.

I. Background

[3] The Applicant is a citizen of China. She arrived in Canada from China in February 2017 and made a claim for refugee status, stating that she feared serious harm in China because of her Christian religious practices.

[4] The Applicant alleges that she was introduced to Christianity through discussions with her grandmother. In March 2016, she began to attend her grandmother's underground house church in the Hebei Province of China.

[5] The Applicant states that the Public Security Bureau (PSB) raided a meeting of the house church on October 16, 2016 but that she escaped and went into hiding at her aunt's home. On October 18, 2016, the Applicant's parents informed the aunt that the PSB had searched for the Applicant at her parents' home and had left a summons accusing her of involvement in illegal house church activities. On October 20, 2016, the PSB returned to her parents' house and left an arrest warrant for the Applicant.

[6] The Applicant alleges that she left China on February 6, 2017 with the assistance of a smuggler. She fears that if she were to return to China, the PSB would arrest her.

II. RPD Decision

[7] On September 8, 2017, the RPD found that the Applicant's evidence and testimony were not credible and refused her claim. The panel stated that the "evidence in areas crucial to the claim lacks credibility" and found that the Applicant had not been subject to religious persecution prior to leaving China. Due to the Applicant's sparse testimony and knowledge of her church, the RPD was not satisfied as to the genuineness of her religious affiliation, particularly as she claimed to be a youth leader in the church. Further, the panel held that there was insufficient evidence that the alleged underground church had the level of profile and affiliation beyond the Applicant's locality to attract the type of attention and mistreatment she recounted.

[8] The RPD also found that the Applicant's narrative regarding her ability to exit China through an international airport under her own identity and using her own travel documentation was not plausible in light of her testimony that: a summons and arrest warrant had been issued in her name; the PSB came looking for her after she left China; and, other members of her underground church had been arrested. The panel referenced the Golden Shield regime in China, which I discuss more fully below, and the security measures and degree of coordination between Chinese authorities and airport officials, and rejected the Applicant's claim that she was a wanted person when she left China:

Based on the Golden Shield regime and related security measures and coordination by Chinese authorities and airport officials, it is not plausible that she would have been able to pass successfully through several checkpoints and be permitted to board a flight and leave China if she had been issued a summons and an arrest warrant by that time. In the particular circumstances of this case, I adopt the reasoning in the Board's jurisprudential guide.

[9] The RPD briefly considered the summons issued in the Applicant's name. While it noted differences between the Applicant's summons and that contained in the National Documentation Package (NDP) for China, the panel did not assess her summons in light of its adverse credibility findings.

[10] Finally, the RPD rejected the Applicant's *sur place* claim on the basis that her testimony was again sparse and lacked "the ring of truth". She had not established that she was a genuine practitioner of Christianity in Canada.

III. RAD Decision under Review

[11] The Decision is dated August 7, 2018. The RAD dismissed the appeal and confirmed the RPD's decision. The Applicant raised the four errors in the RPD's decision:

1. The RPD erred in its finding that the Applicant would not have been able to exit China using her own passport if she was wanted by the PSB;
2. The RPD erred by failing to make a clear finding regarding the raid of the Applicant's church in China;
3. The RPD erred in its assessment of the summons; and
4. The RPD erred in its analysis of the Applicant's religious practice in Canada and her religious identity.

(i) *Applicant's exit from China*

[12] The RAD found that the RPD did not err in its finding that the Applicant could not have left China using her own passport given her allegation that the PSB was vigorously pursuing her. The RAD reviewed in detail the meticulous nature of PSB investigations, including the

information gathering practices of PSB officers when they raid house churches. Each individual's information is collected and stored in a sophisticated national database, known as the Golden Shield database, which is accessible by all officers operating in China's security apparatus. The Applicant testified that both a summons and arrest warrant were issued in her name for involvement in illegal religious activities and that she was required to report to the local PSB. In these circumstances, the Applicant's information would have been entered into the Golden Shield database and the preponderance of the documentary evidence indicated that it was not possible for a person wanted by the authorities to exit China.

[13] With respect to the Applicant's argument that the RPD failed to consider her evidence that a smuggler assisted her in leaving China, the RAD found that she provided little detail in this regard. Her evidence did not account for her ability to by-pass the screening conducted by the airline at the gate or the covert facial recognition system at the airport even if she had bribed a smuggler. The panel acknowledged the presence of corruption in China but stated that there was insufficient evidence to establish that the corruption extended to the airport security apparatus.

(ii) *Summons and Arrest Notice*

[14] The RAD agreed with the Applicant that the RPD was required to conduct an assessment of the summons and arrest warrant given the importance of the documents in establishing that she was wanted by the Chinese authorities. Although the RPD erred in this regard, the RAD was able to conduct a comprehensive assessment of the documents.

[15] The RAD reviewed the NDP documentation and determined that the structure and format of the Applicant's summons was not consistent with the NDP sample. As a result, the panel found that the summons was fraudulent and drew a negative inference regarding the Applicant's credibility. The RAD agreed that the widespread availability of fraudulent documents in a country was not, by itself, sufficient to reject a document as a forgery but stated that such availability may be relevant if there are other reasons, as in the present case, to doubt the document in question. With respect to the arrest warrant, the RAD stated that the warrant cited the incorrect article of the *Chinese Criminal Code*. This, coupled with the fraudulent summons and the ready availability of fraudulent documents generally, resulted in the RAD concluding the arrest warrant was not a genuine document.

[16] The RAD summarized its findings regarding the summons and arrest warrant and the impact of those findings on its assessment of the Applicant's credibility as follows:

[30] *Summary:* Given these fraudulent documents, the RAD finds, on a balance of probabilities, that the Appellant was not wanted by the PSB or the authorities in China as alleged. Given that there is no credible documentation provided to support her allegations of being wanted by the authorities, the RAD finds the Appellant is not a credible witness. The RAD also finds that a determinative basis of her claim, i.e. being wanted by the authorities in China for her alleged illegal activities regarding her religious practice, is not credible. Given this finding, the RAD finds that the Appellant could have left China on her own documentation without difficulty, and that the allegations that she used a smuggler to facilitate her leaving China are not credible. The RAD also finds, on a balance of probabilities, that the Appellant did not engage in illegal religious activities in China and has not established, on a balance of probabilities, that she practised any sort of Christianity in China.

(iii) *Sur place claim - Religious identity and practice in Canada*

[17] The RAD found that the RPD did not err in its conclusion that the Applicant had not established her religious identity either in Canada or China. The panel emphasized that the Applicant's continuing practice of Christianity in Canada was based on her adherence to her alleged religious practice in China. Having found that she was not a Christian practitioner in China and having no evidence of an independent impetus to practice Christianity in Canada, the RAD concluded that the Applicant joined a Christian church in Canada only for the purpose of supporting a fraudulent refugee claim. The panel gave little weight to the documents submitted by the Applicant (a letter from her Canadian church, a baptismal certificate and photographs) in assessing the genuineness of the Applicant's religious convictions. The panel also found that there was no evidence in the record indicating that her religious activities in Canada had come to the attention of the Chinese authorities.

[18] In the alternative, the RAD considered whether, if the Applicant were to practice her religion on a return to China, she would be subject to persecution. The panel conducted an extensive review of the NDP for China and the widespread practice of Christianity in China in both registered and unregistered churches. The RAD noted that there was only one report of an incident in the Applicant's home province of Hebei and that, in general, the Chinese authorities did not concern themselves with the millions of people in China who worship at unregistered churches, other than those groups that have been declared cults. The RAD concluded that the Applicant's risk of persecution as a result of the practice of her Christian faith in China in an unregistered church was less than a serious possibility.

IV. Issues

[19] The Applicant raises the following issues in this application:

1. Whether the RAD violated the Applicant's right to procedural fairness by analyzing the summons and arrest warrant without notice to her?
2. Whether the RAD's decision regarding the Applicant's credibility, particularly with respect to her exit from China, was reasonable?
3. Whether the RAD's decision to reject the Applicant's *sur place* claim was reasonable?

V. Standard of review

[20] The issue of procedural fairness raised by the Applicant will be reviewed for correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54). My review in this regard focuses on the procedure followed by the RAD in arriving at its Decision and not on the substance or merits of the case in question.

[21] The second and third issues raised by the Applicant contest the substance of the Decision. The standard of review for this Court in reviewing a decision of the RAD is reasonableness (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35; *Gebremichael v Canada (Citizenship and Immigration)*, 2016 FC 646 at para 8). In practical terms, this means that I am required to assess whether the RAD's credibility findings and its assessment of the country condition evidence regarding China were reasonable (*Gbemudu v Canada (Citizenship, Refugees and Immigration)*, 2018 FC 451 at para 23).

VI. Analysis

1. Whether the RAD violated the Applicant's right to procedural fairness by analyzing the summons and arrest warrant without notice to her?

[22] The Applicant submits that the RAD violated her right to procedural fairness by analysing the summons and arrest warrant and drawing a number of negative credibility inferences due to its conclusion that the documents were fraudulent, all without providing her notice and an opportunity to respond.

[23] I find that the RAD made no error in this regard. The RAD's analysis of the summons and arrest warrant did not raise new issues that required the provision of notice to the Applicant. The panel's analysis of the documents responded specifically to one of the arguments raised by the Applicant in her appeal of the RPD's decision. The RAD stated:

[20] The RPD found that the summons the Appellant received was not consistent with the sample summons contained in the National Documentation Package (NDP). The RPD found that it was not plausible that the Appellant would have received both a summons and an arrest warrant, and that the authorities have continued to look for her, given that she was able to pass through and depart from a Chinese international airport on her own identity. The RPD therefore found it unnecessary to assess the specific summons documents that had been submitted. The RPD further found that it had not been established that the Appellant had the experience of receiving any notice or arrest warrant at any time and indicated that document fraud is a major problem in China.

...

[23] The RAD finds that the Appellant's argument in regard to the assessment of the summons and arrest warrant has merit. The RAD finds, given the importance of these documents in establishing central elements of the claim, that it was incumbent upon the RPD to conduct a thorough review of the documents. Although the RPD erred in this regard, the RAD is able to conduct a comprehensive assessment of the summons and the arrest warrant.

[24] Having raised the RPD's failure to consider the summons and arrest warrant as an issue for the appeal, the Applicant cannot subsequently argue that her right to procedural fairness was breached by the panel conducting the very analysis she requested.

[25] The Applicant acknowledges that she addressed the RPD's treatment of the summons and arrest warrant on appeal. However, she argues that, once the RAD agreed that the RPD erred in failing to analyse the documents, the RAD should either have remitted the issue to the RPD for redetermination or have held a hearing or alerted the Applicant to the fact that it intended to conduct a substantive analysis of the documents. The Applicant states that she could not have predicted what issues the RAD may address and could not reasonably have provided submissions.

[26] The Applicant's argument is not persuasive. The RPD identified the following concerns with the summons and arrest warrant:

Counsel stated that if there are any differences between the claimant's documents in this regard and the sample contained in the National Documentation Package, which I find there are, those differences are not substantive but rather more based on form, and no adverse inference should be drawn from such differences. Additionally, he submitted that differences in the documents can be attributable to regional variances which leave open the possibility of the absence of absolute compliance with the sample form in the National Documentation Package.

[27] The RAD's analysis of the documents focussed on the issues identified by the RPD. The RAD panel did not consider new, unrelated concerns regarding either the summons or the arrest warrant. The Applicant had full opportunity before the RAD to address the discrepancies

between her documents and the NDP samples and I see no basis for the argument that she could now know the case she had to meet.

2. Whether the RAD's decision regarding the Applicant's credibility, particularly with respect to her exit from China, was reasonable?

Parties' Submissions

[28] The Applicant submits that the RAD erred in confirming the RPD's conclusion that she was able to leave China using her own passport because she was not wanted for arrest by the Chinese authorities. The Applicant states that the RAD ignored her evidence that she had hired a smuggler to assist her, arguing that "the fact that the Applicant was able to enter Canada illegally with the help of a smuggler also stands unchallenged". She relies on jurisprudence of this Court which has held that it is not implausible that an individual could leave China using their own identity with the help of a smuggler (see, e.g., *Zhang v Canada (Citizenship and Immigration)*, 2008 FC 533 (*Zhang*); *Ren v Canada (Citizenship and Immigration)*, 2015 FC 1402 (*Ren*); *Huang v Canada (Citizenship and Immigration)*, 2017 FC 762 (*Huang 2017*)).

[29] The Respondent submits that the RAD reasonably concluded that the Applicant's narrative was not credible. The RAD found that, if her story were true, the Applicant's information would have been entered into the Golden Shield database and she would have been unable to leave the country using her own passport. The Respondent argues that these findings were consistent with current case law of this Court. With regards to the alleged smuggler, the Applicant provided no credible details about her smuggler or her evasion of the Golden Shield security measures. The Respondent cites the decisions in *Li v Canada (Citizenship and*

Immigration), 2018 FC 877 (*Li*) and *Yan v Canada (Citizenship and Immigration)*, 2017 FC 146 (*Yan*) to contradict the cases cited by the Applicant (in particular *Zhang* and *Ren*) and emphasizes that the Golden Shield database was in full operation when the Applicant left China in 2017.

Analysis

[30] I find that the RAD's assessment of the Applicant's narrative and credibility was reasonable. The RAD's analysis of the Applicant's evidence against the NDP for China was thorough and intelligible. The panel's conclusion that the Applicant was able to leave China using her own passport because she was not wanted for arrest by the authorities is well supported by the documentary evidence and is consistent with recent jurisprudence of this Court.

[31] The RAD considered the Applicant's exit from China at length. The panel summarized her arguments regarding the errors made by the RPD and conducted its own analysis of the alleged actions of the PSB in raiding the Applicant's church, the issuance of the summons and arrest warrant, the arrests of other members of her church, and the fact that her identity would have been known to the PSB as a result of these events. Based on its review of the NDP documentation, the RAD concluded that the Applicant's information would have been entered into the Golden Shield database and, as a person wanted by the authorities, the Applicant would not have been able to exit China using her own passport. The RAD's conclusion is consistent with the information in the NDP. In addition, the contradiction between the Applicant's claims of religious persecution and threatened arrest on the one hand, and her ability to leave China

unimpeded on the other, reasonably gave rise to the RAD's negative credibility inference. The contradiction undermines the central element of the Applicant's narrative.

[32] The Applicant argues that the RAD's reliance on the Jurisprudential Guide (TB6-11632) issued by the Immigration and Refugee Board of Canada and its finding that she could not have exited China using her passport if she was wanted by the authorities ignore her use of a smuggler. However, the RAD specifically addressed this argument:

[15] The RAD notes that the Appellant alleged during the hearing that the smuggler helped her to leave China, however other than stating that bribes were paid, it is unclear from her evidence how this was done. However, even if a bribe was paid, it does not account for the additional level of screening conducted by the airline at the gate and for how the Appellant was able to by-pass the covert facial recognition system. It also does not account for the advance passenger information that is submitted to Chinese authorities by the airline prior to going through exit immigration inspection procedures.

[33] In my view, the RAD adequately addressed the alleged involvement of a smuggler. The Applicant provided no details regarding the smuggler and/or how the smuggler assisted her in passing the various security checkpoints at the airport.

[34] A number of recent decisions of this Court have considered the ability of an individual who is wanted by the Chinese authorities to leave the country now that the Golden Shield database is fully operative (*Li*, cited above, *Huang v Canada (Citizenship and Immigration)*, 2019 FC 148 (*Huang 2019*); *Yan v Canada (Citizenship and Immigration)*, 2017 FC 146 at paras 20-21). In *Huang 2019*, Associate Chief Justice Gagné acknowledged the existence of two lines

of cases from this Court involving the use of a smuggler to evade the operation of the Golden Shield system and stated (at para 38):

[38] In this particular case, as in *Gong*, supra at para 14, *Chen*, supra at paras 31-32, and *Lin*, supra at para 40, the RPD pointed to the objective country conditions evidence to support its finding that it was unlikely for the Applicants to have been able to exit China, despite having hired a smuggler. This is consistent with Jurisprudential Guide TB6-11632 at paragraphs 32-36 which found unlikely that a wanted refugee claimant could bypass all of the exit controls in place, even with the assistance of a smuggler. I note that, as per the *Policy Note regarding the identification of TB6-11632 as a RAD Jurisprudential Guide*, RPD and RAD members are expected to apply Jurisprudential Guides in cases with similar facts or provide reasoned justifications for not doing so. This increases the consistency, certainty and predictability in the decision-making process (*Jiang v Canada (Citizenship and Immigration)*, 2018 FC 1064 (CanLII) at paras 26-27).

[35] In *Li*, another decision of Justice Gagné (as she then was), three claimants from China made refugee claims alleging persecution due to their practice of Falun Gong. The RAD rejected their appeal of the RPD's decision because they lacked credibility and had not established a *sur place* claim. The claimants maintained that they had left China with the assistance of a smuggler using their own passports, despite the fact they were wanted by the PSB. The arguments addressed by Justice Gagné are similar to those of the Applicant in this application and her analysis is directly on point (*Li* at paras 17-21):

[17] I agree with the RAD that the present case can be distinguished from *Zhang v Canada (Citizenship and Immigration)*, 2008 FC 533 (CanLII) and *Ren v Canada (Citizenship and Immigration)*, 2015 FC 1402 (CanLII).

[18] First, in both cases, this Court reviewed decisions from the RPD issued prior to the issuance of the above-mentioned Jurisprudential Guide.

[19] Second, both decisions were based on much older documentary evidence suggesting that it was possible to exit China

on one's own passport with the assistance of a smuggler who bribed the appropriate person. In *Zhang*, no reference was made to the Golden Shield Project, while in this case the program's existence and capabilities were detailed by the National Documentation Package. In *Ren*, the applicant had provided clear testimony that he had engaged a smuggler who told him to go to a specific exit. That is far from the evidence presented by Mrs. Li as to the circumstances in which the Applicants exited China.

[20] On that point, the RAD considered Mrs. Li's evidence to be vague and speculative. She stated that their smuggler must have made the arrangements and bribed one or more officer(s). She further stated that they went through "without problems". Her passport was not scanned at the first checkpoint but she is not sure whether it was scanned at the second one, just as she does not know whether her husband's and her son's passports were scanned.

[21] I find that the RAD considered all the evidence and that its conclusion is within the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 (CanLII) at para 47).

[36] In light of the recent jurisprudence of this Court, I find no reviewable error in the Decision either in respect of the RAD's analysis and conclusions regarding the Applicant's exit from China or in respect of its resulting adverse inferences regarding her credibility. As in *Li*, the RAD in this case considered the Applicant's evidence, the lack of detail regarding the purported role of the smuggler and the comprehensive reach of the Golden Shield database. The RAD's conclusions are supported by the current NDP for China and the Jurisprudential Guide, and accurately reflect the evidence in the record.

3. Whether the RAD's decision to reject the Applicant's *sur place* claim was reasonable?

Parties' Submissions

[37] The Applicant argues that the RAD's analysis of her *sur place* claim was inappropriately tainted by its prior negative credibility findings. She argues that the RAD erred by basing its decision concerning her present religious beliefs on its credibility findings rather than on the evidence she submitted (see, e.g., *Yin v Canada (Citizenship and Immigration)*, 2010 FC 544 at para 90 (*Yin*)). She also argues that the RAD failed to conduct a forward-looking analysis and to consider whether she could practice her religion freely if she returned to China.

[38] The Respondent submits that the RAD reasonably cited jurisprudence that permits a decision-maker to rely on a finding that a claimant has advanced a fraudulent claim of religious persecution to assess the genuineness of the claimant's *sur place* claim (*Chen v Canada (Citizenship and Immigration)*, 2015 FC 969 at para 8 (*Chen*)). The Respondent also submits that the RAD considered the low likelihood of the Applicant's religious activities in Canada (even if they were legitimate) attracting the attention of Chinese authorities. Finally, the RAD reasonably concluded that, even if the Applicant returned to China and practiced Christianity, she would likely not be persecuted.

Analysis

[39] I find that the RAD's *sur place* analysis was reasonable. Again, the panel's analysis was thorough and considered not only the Applicant's failure to establish her adherence to

Christianity in China but also her evidence regarding her religious activities in Canada. In addition, the panel properly conducted a forward-looking analysis and assessed whether there was more than a possibility of persecution should the Applicant return to China and practice Christianity.

[40] It is clear that the RAD's prior negative credibility findings influenced its decision regarding the Applicant's *sur place* claim. The RAD succinctly explained the link between the two issues as follows:

[35] The RAD has reviewed the record and has conducted its own assessment, and finds that the RPD did not err in finding that the Appellant had not established her religious identity either in Canada or China on a balance of probabilities. Having found that the Appellant was not wanted by the authorities for her involvement in Christian activities in China or that she was a Christian practitioner in China, the RAD must consider whether the Appellant is a genuine adherent in this country. The Appellant has alleged that the impetus to practice Christianity in Canada took place as a result of a set of circumstances which occurred in China. She alleged that her continued practice of her belief system in Canada is based on her adherence to her alleged practice in China.

[41] In other words, the two claims were inextricably linked. The RAD's finding that the Applicant joined a Christian church in Canada solely for the purpose of supporting a fraudulent refugee claim follows logically from its finding that she was not a practitioner of Christianity in China (*Chen* at para 8).

[42] It is of course possible that an individual may become religious after coming to Canada (*Huang v Canada (Citizenship and Immigration)*, 2012 FC 205 at para 32). As stated by Justice Russell in *Yin* (at paras 90-91), the RAD was required to consider the Applicant's evidence

regarding her religious practices in Canada and to explain why it did not accept the evidence as sufficient to establish a *sur place* claim. The RAD did so but found that the evidence, including a letter from the Applicant's Canadian church, did not speak to her religious motivations.

[43] In my view, the RAD's two-step analysis was transparent and intelligible. The Applicant positioned her *sur place* claim as a continuation of her Christian practices in China. Once that aspect of her claim was found to be fraudulent, the primary basis of her *sur place* claim fell away. Nevertheless, the RAD considered whether she had genuinely adopted and practiced her Christian faith while in Canada but concluded she had not.

[44] Finally, the RAD assessed whether the Applicant would face more than a mere possibility of persecution if she were to return to China and decide to practice Christianity. The RAD analysed the country condition evidence at length and concluded that the Applicant would face an extremely low likelihood of persecution if she pursued her Christian faith upon return to her home province in China, particularly considering the 50 to 90 million practicing Christians in China, most of whom worship without issue at unregistered churches. I find that the RAD's forward-looking analysis of the Applicant's likelihood of persecution in China was reasonable.

VII. Conclusion

[45] The application is dismissed.

[46] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT in IMM-4285-18

THIS COURT'S JUDGMENT is that:

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

"Elizabeth Walker"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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