

Federal Court



Cour fédérale

Date: 20191115

Docket: IMM-1375-19

Citation: 2019 FC 1430

Ottawa, Ontario, November 15, 2019

PRESENT: Madam Justice Simpson

BETWEEN:

GANGQING ZHENG

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered orally from the Bench in Toronto, Ontario on October 30, 2019)

I. Proceeding

[1] This application is for judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board, dated February 4, 2019, in which the Panel denied the Applicant's claim for refugee protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

[2] The Applicant alleged that he went to the United States on April 23, 1995 and returned to China on January 20, 2010 and stayed there for a period of two years. The Applicant said that he owned property in China that was subject to expropriation. He stated that the amount of compensation he was offered was too low, and that he protested by blocking the road on July 9, 2012.

[3] The Applicant alleged that as a result of his protest, he was arrested and beaten by the Public Security Bureau [PSB]. He says that the PSB took his second generation Resident Identity Card while he was in detention in the village committee office.

[4] The Applicant says that he was able to escape through a window. He then hired a smuggler and came to Canada on August 16, 2012. He filed a claim for refugee protection the following month.

[5] There are four issues:

1. Was there a breach of procedural fairness caused by the more than six year period [the Delay] between the filing of the Applicant's PIF and his RPD hearing?
2. Did the Panel err in failing to make an explicit finding about the Applicant's identity?
3. Did the Panel fail to consider documentary evidence showing that the Applicant was fined on his return to China on January 20, 2010?
4. Did the Panel err in law by failing to give notice of her specialized knowledge under RPD Rule 22?

II. Discussion

1. *Delay*

[6] The case law makes it clear that to succeed the Applicant must show that he has suffered prejudice caused by the Delay. Since his PIF would assist with the recollection of events, and since no actual prejudice has been shown, I have concluded that the Delay did not amount to a breach of procedural fairness.

2. *Identity*

[7] The Applicant submitted two documents to establish his identity. They were two Resident Identity Cards. The first was an original which lacked a security feature. It was also problematic because it was allegedly obtained by the Applicant's mother, even though the Country Condition Documents state that they must be applied for in person. The second document was a photocopy which did not appear to be a copy of a card. Further, if the second was legitimate, the first should have been turned in and no longer in the Applicant's possession. The Panel therefore concluded that the two Resident Identity Cards were fraudulent.

[8] The Panel rejected the Applicant's "remaining" documents because they were all dated after January 2010 and there was evidence showing that the Applicant did not return to China on January 20, 2010 and remain there until 2012 as alleged. It was admitted that he was photographed with the Dalai Lama in New York City on May 24, 2010. As well, he was required to be in the U.S. during the two-year period in question because of the status of his U.S. immigration proceedings. This evidence meant that he did not go to China and remain there from January 2010 to 2012.

[9] In my view, the Panel clearly reasonably rejected all the documents which bore on the Applicant's identity. In so doing, it can be readily understood to have concluded that his identity was not established. An explicit finding in these circumstances was unnecessary.

[10] The Panel also proceeded, in the alternative, to consider whether, if he was in fact a Chinese citizen, sections 96 or 97(1) of the IRPA applied. This alternative assessment did not, in my view, detract from the Panel's conclusion that the Applicant's identity had not been established and that his claim had no credible basis.

3. *The Fine*

[11] Some of the "remaining" documents which the Panel rejected were listed, but the list was not exhaustive since the word "included" was used. A review of the Record shows that the other documents included a document purporting to show that the Applicant paid a fine for invalid re-entry to China on January 20, 2010. Since this was among the "remaining" documents, the Panel did not fail to make a finding about the fine.

4. *Notice under Rule 22*

[12] Rule 22 reads as follows:

22 Before using any information or opinion that is within its specialized knowledge, the Division must notify the claimant or protected person and, if the Minister is present at the hearing, the Minister, and give them an opportunity to

22 Avant d'utiliser des renseignements ou des opinions qui sont du ressort de sa spécialisation, la Section en avise le demandeur d'asile ou la personne protégée et le ministre — si celui-ci est présent à l'audience — et leur donne la possibilité de faire ce qui suit :

(a) make representations on the reliability and use of the information or opinion; and

(b) provide evidence in support of their representations.

a) présenter des observations sur la fiabilité et l'utilisation du renseignement ou de l'opinion;

b) transmettre des éléments de preuve à l'appui de leurs observations.

[13] A review of the transcript shows that at page 447 of the Certified Tribunal Record at line 34, the required notice was given and thereafter the Applicant was provided with an opportunity to comment on the Panel's conclusions. Further, there was nothing to prevent counsel from making submissions or asking for permission to adduce further evidence if he felt that would be helpful. In my view, there was no failure to give the required notice.

III. Certification

[14] No question was posed for certification for appeal.

IV. Conclusion

[15] For all these reasons, the application will be dismissed.

JUDGMENT IN IMM-1375-19

THIS COURT'S JUDGMENT is that the application for judicial review is hereby dismissed.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1375-19

STYLE OF CAUSE: GANGQING ZHENG v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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