

Federal Court



Cour fédérale

Date: 20200320

Docket: IMM-4403-19

Citation: 2020 FC 400

Ottawa, Ontario, March 20, 2020

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

**YANHONG QI
GUANG ZHENG**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Yanhong Qi and her husband Guang Zheng [Applicants] seek judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB]. The RAD confirmed a decision of the Refugee Protection Division [RPD] of the IRB that the

Applicants are neither Convention refugees nor persons in need of protection pursuant to ss 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The Applicants are citizens of China. They claim to fear persecution by the Chinese authorities due to Ms. Qi's practice of Falun Gong, a spiritual philosophy that is outlawed in China.

[3] The RAD reasonably drew an adverse inference respecting the Applicants' credibility based on material omissions from their Basis of Claim [BOC] forms. Ms. Qi was unable to provide a satisfactory explanation for leaving China nearly a month after her husband. The absence of travel documents and the Applicants' inability to account for their route to Canada further detracted from the credibility of their narrative. Ms. Qi could demonstrate only a cursory knowledge of Falun Gong. In light of its other adverse credibility findings, it was open to the RAD to conclude that Ms. Qi was not a genuine practitioner of Falun Gong.

[4] The application for judicial review is dismissed.

II. Background

[5] Ms. Qi says that she and a friend began practising Falun Gong in 2015 to help alleviate health problems, such as pain, sweating, faintness and shortness of breath. In 2016, she began to practise Falun Gong as part of a group.

[6] According to Ms. Qi, in February 2017 the leader of her group advised her that another practitioner, Tian Lu, had been arrested. Mr. Zheng says this caused him to fear for the couple's safety in China.

[7] The Applicants say that a friend of Mr. Zheng's cousin helped them to find a smuggler, who obtained Canadian visas for them. Mr. Zheng arrived in Canada in July 2017. Ms. Qi arrived the following month. The Applicants sought refugee protection on August 6, 2017.

III. Decision under Review

[8] The RAD upheld the RPD's adverse credibility findings, in particular:

- (a) Ms. Qi recounted incidents in her testimony that were missing from the Applicants' BOC forms. These included the arrest of Tian Lu's husband approximately two months after Tian Lu's arrest, and visits to Ms. Qi's mother-in-law by the Chinese Public Security Bureau [PSB] in November and December 2017. Because Mr. Zheng also claimed to fear arrest, it was implausible that the Applicants would neglect to mention the arrest of Tian Lu's husband. Ms. Qi amended her BOC form on January 5, 2018, but did not include these events.
- (b) Ms. Qi could not explain why her husband left China before she did, and there was a lack of documentation respecting their travel. Ms. Qi's Canadian visa was issued in Vienna, and her country of residence in the Global Case Management System

notes was shown as the Czech Republic. There were no boarding passes, luggage tags or flight itineraries.

- (c) Ms. Qi did not have a “fundamental understanding of core and significant concepts in Falun Gong”. Despite her modest level of education, she should have been able to articulate basic Falun Gong concepts after practising the philosophy for two years and three months. Photographs and a letter from someone who claimed to practise Falun Gong with Ms. Qi at Milliken Park in Toronto were entitled to little weight, given the adverse credibility findings.

IV. Issue

[9] The sole issue raised by this application for judicial review is whether the RAD’s decision was reasonable.

V. Standard of Review

[10] The RAD’s decision is subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 48). The Court will intervene only if “there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100). These criteria are met if the reasons allow the Court to understand why the decision was made, and determine whether the

decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

VI. Analysis

[11] The Applicants have not sworn personal affidavits in support of their application. The application is supported only by the affidavit of an employee of their lawyer's firm.

[12] An affidavit supporting an application for judicial review is “one of the primary sources of information from which the Court gains an understanding of the Applicant’s concerns with the decision making process” (*Ebrahimshani v Canada (Citizenship and Immigration)*, 2020 FC 89 [*Ebrahimshani*] at para 20, citing *Zhang v Canada (Citizenship and Immigration)*, 2017 FC 491 at para 14). However, the absence of a personal affidavit is not necessarily fatal to an application. Where there is no affidavit, and therefore no evidence based on personal knowledge, any error asserted by the applicant must appear on the face of the record (*Dhillon v Canada (Citizenship and Immigration)*, 2009 FC 614 at paras 4-10; *Ebrahimshani* at para 20, citing *Turcinovica v Canada (Citizenship and Immigration)*, 2002 FCT 164 at para 14).

[13] The requirements for completing a BOC form are set out in the *Refugee Protection Division Rules*, SOR/2012-256. The BOC form is intended to provide details about the claimant, his or her family, related documents, travel history, and the reasons for which refugee protection is sought. The presumption that a refugee claimant’s sworn testimony is true may be rebutted

where the applicant has not offered a reasonable explanation for material omissions (*Tellez Picon v Canada (Minister of Citizenship & Immigration)*, 2010 FC 129 at para 12).

[14] A refugee claimant may provide details in oral testimony that were not included in a personal information form without impugning the claimant's credibility, unless the omissions are significant to the claim (*Ogaulu v Canada (Citizenship and Immigration)*, 2019 FC 547 at paras 18-20). A failure to mention material or key allegations of persecution is a reasonable basis for concern, although the omission of peripheral detail is not (*Feradov v Canada (Minister of Citizenship and Immigration)*, 2007 FC 101 at paras 17-18). The accumulation of contradictions or omissions in an applicant's refugee claim can support a negative credibility finding (*Gomez Florez v Canada (Minister of Citizenship and Immigration)*, 2016 FC 659 at para 28).

[15] In this case, the arrest of Tian Lu's husband and the PSB's repeated efforts to locate the Applicants were directly relevant to their claims of persecution. The RAD reasonably drew an adverse inference respecting their credibility based on these omissions, and their feeble excuse that it never occurred to them that these incidents might be relevant.

[16] The RAD reasonably found that Ms. Qi could not provide a satisfactory explanation for leaving China nearly a month after her husband. The absence of travel documents and the Applicants' inability to account for their route to Canada further detracted from the credibility of their narrative.

[17] The Applicants complain that the RAD unreasonably found that Mr. Qi is not a genuine practitioner of Falun Gong. However, the RAD noted that Falun Gong is not a religion, but a philosophy. Unlike religions, the practice of Falun Gong requires “sufficient knowledge to be a *bona fide* practitioner, and does not rely on pure faith the way religions do.”

[18] The jurisprudence of this Court suggests there is a “very low standard on refugee claimants to demonstrate religious knowledge as a requirement for proving religious identity”, including with respect to Falun Gong (*Lin v Canada (Minister of Citizenship & Immigration)*, 2012 FC 288 at para 59; *Lin v Canada (Citizenship and Immigration)*, 2018 FC 1057 at paras 19-20). Nevertheless, the RPD is entitled to probe whether a claimant’s story is credible by asking questions about the basic tenets of his or her faith. The RPD may choose to disbelieve a claimant whose knowledge does not correspond to the duration and depth of his or her religious activities.

[19] The RPD may not assess the genuineness of a claimant’s religious beliefs by engaging in “what amounts to a trivia quiz” (*Jia v Canada (Minister of Citizenship and Immigration)*, 2016 FC 33 at para 17, citing *Wu v Canada (Citizenship and Immigration)*, 2009 FC 288 at paras 59-61). The questioning and resulting analysis must focus on the genuineness of the beliefs, not on whether they are theologically correct (*Gao v Canada (Citizenship and Immigration)*, 2015 FC 1139 at para 26).

[20] The RAD accepted that Ms. Qi had “some knowledge of Falun Gong”, but agreed with the RPD that the knowledge she demonstrated was “cursory at best”. She was not able to explain basic Falun Gong principles, and her responses to questions were “vague, and lacking both in

detail and depth.” Given its other adverse credibility findings, it was open to the RAD to conclude that Ms. Qi was not a genuine practitioner of Falun Gong.

VII. Conclusion

[21] The application for judicial review is dismissed. None of the parties proposed that a question be certified for appeal.

JUDGMENT

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

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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