

Federal Court



Cour fédérale

**Date: 20200508**

**Docket: IMM-702-19**

**Citation: 2020 FC 605**

**Ottawa, Ontario, May 8, 2020**

**PRESENT: The Honourable Madam Justice Elliott**

**BETWEEN:**

**LI YING CHEN  
(A.K.A. XUEQING TANG)**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] This is an application for judicial review of a decision by the Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] dated January 8, 2019 in which it found that the Applicant was not a Convention refugee or a person in need of protection [Decision].

[2] For the reasons that follow, this judicial review is denied.

II. **Background Facts**

[3] The Applicant, Li Ying Chen, is a citizen of China. The Applicant is also known as Xueqing Tang.

[4] The Applicant states that she is wanted by the Public Security Bureau [PSB] and village birth control officers in China because she helped a pregnant woman avoid an abortion.

[5] The Applicant alleges that she was volunteering at her local temple on April 5, 2012 when a pregnant woman asked her for a place to hide from the birth control officers in the village who wanted her to have an abortion. The Applicant allowed the woman to hide in the temple overnight.

[6] The PSB and birth control officers went to the temple to search for the Applicant, and told the temple master that the Applicant had committed a crime by sheltering the pregnant woman in the temple. The Applicant then went into hiding at her cousin's house.

[7] The PSB went to the Applicant's house and the Applicant's goddaughter's house twice, searching for the Applicant. The PSB left a summons with the Applicant's goddaughter.

[8] In mid-April 2012, the Applicant hired a smuggler to help her leave China. The smuggler helped the Applicant obtain a United States visitor's visa and bribe a border official in China.

[9] On May 28, 2012, the Applicant left China on a fraudulent Hong Kong passport. The same day, the Applicant entered the United States under her real name, using a genuine passport.

On June 1, 2012, the Applicant entered Canada under a false name, on the advice of the smuggler.

[10] On July 16, 2012, the Applicant filed a refugee claim under the name Li Ying Chen. The smuggler attended the immigration office with the Applicant.

[11] On October 3, 2012, the IRB received information from the US Department of State that the Applicant's fingerprints matched those of "Xueqing Tang". Xueqing Tang had applied for a US visa in April 2012 and had entered the United States in May 2012. The IRB also learned that the Applicant had made two unsuccessful applications for Canadian temporary resident visas.

[12] On August 7, 2018, twelve days before her scheduled RPD hearing, the Applicant submitted an amendment to her Personal Information Form [PIF]. In the amended PIF, the Applicant changed her name, date of birth, age, family members, marital status, passport information, travel documents, and the details of her travel to Canada. The Applicant amended her name in the narrative but otherwise left the narrative the same.

[13] On August 20, 2018, the Applicant did not attend her refugee hearing, and attended the hospital complaining of shortness of breath. The Applicant had not filed any documents in advance of the hearing.

[14] On September 12, 2018, the Applicant filed documentation in support of her refugee claim.

[15] On October 29, 2018, the Applicant attended her rescheduled RPD hearing.

III. **Decision Under Review**

[16] The RPD found that the determinative issues in the Applicant's refugee claim were identity and credibility.

A. *Identity*

[17] The RPD noted that the Applicant had filed her refugee claim under a false name and date of birth, and had allowed this false information to remain on the record for six years. The RPD noted that the Applicant's amended claim changed her name, age, marital status, family members, passport information, documents, and the manner of her travel to Canada.

[18] The RPD considered the Applicant's explanation for why she used a false name. The Applicant stated the smuggler told her that if she used her real name, immigration officials would learn about her denied visa applications and she would be sent back to China.

[19] The RPD accepted that refugee claimants may need to use a false identity to escape persecution and come to Canada. However, the RPD found that there was no justifiable reason to continue to use a false identity for six years once she was safely in Canada. The RPD noted that the Applicant also used a false name and date of birth in her applications for social assistance and health care.

[20] The RPD did not accept the Applicant's explanation because the Applicant had experienced immigration counsel when she submitted her PIF with a false name and false information. The RPD also found that the Applicant would or should have known about the

refugee process as her four children are in Canada and three of them have made successful refugee claims.

[21] The RPD found that the Applicant only revealed her true identity because she learned that the IRB had obtained biometric information about her. The RPD also found that the Applicant failed to submit documents before her first scheduled refugee hearing because she needed sufficient time to acquire new documents in her real name.

[22] The RPD noted that the Applicant provided inconsistent information about her identity, and that she may be a person who is neither Li Ying Chen nor Xueqing Tang. However, considering the information about the Applicant's Canadian visa applications and the copy of a Resident Identity Card and hukou in the name of Xueqing Tang, the RPD accepted on a balance of probabilities that the Applicant had established her identity as Xueqing Tang.

#### B. *Credibility*

[23] The RPD found on a balance of probabilities that the Applicant did not establish that she was being pursued by the PSB for helping a pregnant woman avoid an abortion.

[24] The RPD found that the claimant lacked general credibility. The RPD drew a negative inference from the fact that the Applicant listed her goddaughter as her daughter in her original PIF and narrative, and then removed her goddaughter from the "Family" section of her amended PIF.

[25] The RPD also found that the Applicant's documents were suspect because of the ready availability of fraudulent documents in China and because the Applicant has used fraudulent

documents to deceive Canadian authorities. The RPD found that the PSB summons was not trustworthy, as the Applicant provided inconsistent testimony about whether her daughter or granddaughter obtained it for her, and because the Applicant's daughter was not living in China at the time. The RPD also assessed the Applicant's temple card, the letter from the pregnant woman, and photographs submitted by the Applicant and found that these materials did not corroborate the Applicant's claim. The RPD noted that the summons was not submitted in time for the first scheduled hearing.

[26] The RPD noted that the Applicant did not provide any documentary evidence that it was unlawful to aid someone escaping from birth control officers. The RPD found that there was no objective evidence that sheltering a pregnant woman for one day would lead to a punishment worse than a reprimand.

[27] The RPD concluded that the Applicant was neither a Convention refugee nor a person in need of protection and rejected the claim.

#### IV. Issues

[28] The Applicant raises three issues on this judicial review: 1) that the RPD erred by failing to independently assess the summons; 2) that the RPD erred by failing to assess the Applicant's claim while accepting her identity as a Chinese national, and 3) that the RPD erred in its assessment of the Applicant's credibility and identity, breaching procedural fairness by drawing a negative inference from the Applicant's decision to amend her PIF.

V. **Standard of Review**

[29] There is now a presumption that the standard of review of an administrative decision is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paragraph 10. The presumption can be rebutted where the legislature indicates it intends a different standard to apply or, the rule of law requires a correctness review. Neither is the case in this application.

[30] This application was argued before the Supreme Court of Canada released the decision in *Vavilov* in which it restated how a reviewing court is to conduct a reasonableness review.

[31] Although the principles set out in *Vavilov* now apply to this application, I find it is not necessary to receive further submissions from the parties. The result would be the same under the pre-*Vavilov* framework set out in *Dunsmuir v New Brunswick*, 2008 SCC 9 [Dunsmuir].

[32] A decision is reasonable if the decision-making process is justified, transparent and intelligible resulting in a determination that falls within the range of possible, acceptable outcomes which are defensible on the facts and law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 47 [Dunsmuir], *Vavilov* at paragraph 15.

[33] For issues of procedural fairness, the reasonableness standard of review does not apply. Mr. Justice Rennie clarified that whether the duty of procedural fairness has been met does not require a standard of review analysis. The ultimate question to be answered by the Court is whether the Applicant knew the case to be met and had a full and fair chance to respond:

*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paragraph 56.

## VI. Analysis

[34] To succeed in having the Decision set aside, the Applicant must successfully contend with fundamental principles.

[35] First, it is accepted that credibility determinations lie within “the heartland of the discretion of triers of fact” such as the RPD. They are entitled to considerable deference upon judicial review and cannot be overturned unless they are perverse, capricious or made without regard to the evidence: *Siad v Canada (Secretary of State)*, [1997] 1 FC 608 at paragraph 24 (FCA).

[36] Second, the Applicant bears the burden to show that the Decision is unreasonable. Before a decision can be set aside on this basis, the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. The court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable: *Vavilov* at paragraph 100.

### A. *The Summons*

[37] The Applicant submits that the RPD incorrectly imported prior credibility concerns to disregard the summons, and failed to independently assess it. The Applicant states that the



summons is the most probative document in corroborating the basis of her claim that she is at risk of persecution by the PSB.

[38] The Applicant notes “that foreign documents are presumed to be authentic and credible unless there is valid reason to reject the documents”: *Ramalingam v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No. 10 (TD). She also submitted that the summons contained security features which the RPD failed to assess.

[39] In addition to finding that the Applicant lacked general credibility, the RPD found that the summons presented was untrustworthy because the Applicant said it had been given to her daughter, at her daughter’s home, but before the incident generating the summons occurred, the daughter’s refugee claim was accepted in Canada. The RPD also noted that the Applicant’s visitor’s visas were refused because all of her children were in Canada. That was approximately five years before the incident with the pregnant woman.

[40] That foreign documents issued by a government are valid is a rebuttable presumption. On the basis set out above, the presumption of authenticity and credibility was rebutted. The RPD had multiple valid reasons, reasonably supported by the evidence it relied upon, to reject the summons.

B. *No failure to assess the Applicant’s claim*

[41] The Applicant questions how the RPD could accept her identity as a Chinese national but fail to assess her claim of persecution by the PSB.

[42] The short answer to that question is that the acceptance of the Applicant's identity was lukewarm at best. The RPD found that the Applicant "is the person whose biometric information matches the U.S. fingerprints" and that the information "also matches the person who made applications for visitor visa to Canada in 2005 and 2007".

[43] The RPD continued by saying "[s]he may very well be the person she now alleges, but I find that I cannot believe anything she says without further reliable, probative and trustworthy corroborative evidence. [ . . . ] The claimant may also be another person who is neither Li Ying Chen nor Xueqing Tang."

[44] The RPD did review the corroborating documents put forward by the Applicant. It found, given various inconsistencies and deficiencies in the documents, that they did not overcome the credibility concerns. On the evidence, that finding was reasonably open to the RPD.

C. *Assessment of the Applicant's Identity*

[45] The Applicant submits that the RPD erred in assessing her credibility and identity by making plausibility findings without adequately assessing her arguments. Specifically she states that the RPD "raised issue with" her use of a fraudulent Hong Kong passport to enter Canada and did not accept her explanation for giving a false identity as reasonable. The Applicant says that she testified that she always intended to update her identity but was waiting to meet her lawyer before a scheduled hearing date. The fact that several years elapsed before a hearing was scheduled was partly due to the delay of the RPD in scheduling.

[46] The Applicant also says that the smuggler told her not to give her real name, so her actions were influenced by a third party that she paid to help her flee to safety. The Applicant submits that it was perfectly plausible that she defer to the smuggler.

[47] The Respondent points out that the RPD specifically conceded that the Applicant may have had to use false identity documents to escape persecution and enter Canada. The RPD found there was no justifiable reason to continue that deception for six years once she was safely in Canada. The RPD also noted that the Applicant had used her false identity during that six year period to deceive authorities when she received social assistance and healthcare benefits.

[48] With respect to the Applicant's claim that she always intended to update her identity, the RPD found that position was belied by the fact that she only conceded her true identity after the biometric match from the United States revealed her identity.

[49] All of these findings were reasonably open to the RPD and supported by the underlying record. The Applicant has failed to meet her burden of showing that the RPD erred in the analysis of her identity.

[50] The Applicant alleged that the RPD drew a negative inference from her decision to amend her PIF, which is something that she had a right to do. Relying on *Angulo v Canada (Citizenship and Immigration)*, 2014 FC 1131 [*Angulo*] the Applicant says that her right to procedural fairness was breached as a result.

[51] A review of *Angulo* indicates that Mr. Justice Zinn found procedural fairness rights had been reached because the RPD failed to wait for the disclosure of PIFs of other family members

notwithstanding the previous order, by another member of the RPD that they be disclosed. When the panel proceeded without that disclosure, Justice Zinn found it had breached the duty of procedural fairness. The facts in this case do not accord in any way with those in *Angulo*.

[52] I am satisfied that there is no evidence that the Applicant's right to procedural fairness was breached in this matter.

D. *Assessment of the Applicant's Credibility*

[53] The RPD considered the Applicant's arguments and statements but found that she lacked general credibility. The Applicant has not shown that finding was perverse, capricious or made without regard to the evidence.

[54] The RPD found the Applicant's documents were not trustworthy after it independently assessed them and found a number of deficiencies with the documents.

[55] For example, the RPD found that the letter from the pregnant woman lacked details and there was no evidence as to when the Applicant received it. Even though it was dated December 23, 2017, it was not filed in time for the first hearing that was cancelled when the Applicant was hospitalized.

[56] The letter also advised the Applicant that two years after she left China, her house and assets had been sealed by the government and her house was now being used as a clinic. The RPD observed that the Applicant's daughter/god-daughter presumably would have informed her of those events. There was also no documentation from the authorities regarding the confiscation of the house.

[57] A review of the letter indicates that while it referred to “that year you harbored me causing you to flee China” it otherwise made no mention of the temple as being the place of hiding or the prospect of a forced abortion as been the reason for seeking help.

[58] The RPD found the Temple Card was not genuine as it was not dated and it referred to the holder of the card as not being an official volunteer until after being monitored for two years. Without a date on the card, it would not be possible to calculate the two-year period.

[59] The RPD found the most important problem with the Temple Card was that the photograph on the card did not appear to be the Applicant. The RPD rejected the Applicant’s explanation that it was six or seven years old and she had lost a lot of weight. The card was also received late as were photographs submitted by the Applicant.

[60] The RPD was clearly and reasonably concerned with the credibility of the Applicant given the wide variety and number of false claims she made, supported by false documents. The RPD did not dismiss the Applicant’s documentary evidence solely on the basis of her lack of credibility. It assessed each document and made separate credibility findings based on the contents of the documents coupled with the fact that they were not submitted in time for the first hearing.

[61] When inconsistent testimony by the Applicant about the source of the documents is added to the mix, it is clear that the RPD findings were not perverse or capricious. In this instance, the RPD findings were made with regard to the evidence.

[62] The Applicant's lack of general credibility legitimately played a role in the RPD findings. A general finding of lack of credibility can affect all relevant evidence submitted by an applicant, including documentary evidence. It can ultimately cause a claim to be rejected: *Rahman v Canada (Citizenship and Immigration)*, 2019 FC 71 at paragraph 28; *Yasik v Canada (Citizenship and Immigration)*, 2014 FC 760 at paragraph 55.

## VII. Conclusion

[63] The Applicant challenged virtually every finding made by the RPD. I have reviewed the bulk of those challenges. Any that I may not have mentioned would not have changed the outcome of this application.

[64] The Applicant has not met her onus of demonstrating that the Decision is unreasonable by establishing that "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 paragraph 100.

[65] The Applicant has not persuaded me that the RPD made findings that were perverse, capricious or made without regard to the evidence.

[66] When conducting judicial review a Court is to refrain from deciding the issue afresh. I am to consider only whether the Decision, including the rationale for it and the outcome to which it led, is unreasonable: *Vavilov* at paragraph 83. I find that the outcome is within the range of possible, acceptable outcomes based on the facts and law. I also find that the rationale articulated by the RPD was reasonable.

[67] For all the above reasons, this application is dismissed.

[68] There is no serious question of general importance for certification on these facts.

[69] No costs.

**JUDGMENT in IMM-702-19**

**THIS COURT'S JUDGMENT is that:**

1. The application is dismissed.
2. There is no serious question of general importance for certification.
3. No costs.

**"E. Susan Elliott"**

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-702-19

**STYLE OF CAUSE:** LI YING CHEN (A.K.A. XUEQING TANG) v THE  
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