

Federal Court



Cour fédérale

Date: 20200924

Docket: IMM-5415-19

Citation: 2020 FC 929

Ottawa, Ontario, September 24, 2020

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

**XITANG ZHAO (A.K.A. XI TANG ZHAO)
YUEQUN ZHAO (A.K.A. YUE QUN ZHAO)
YONGHONG ZHAO (A.K.A. YONG HONG ZHAO)
JIAWEN ZHAO (A.K.A. JIA WEN ZHAO)**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of a decision of the Refugee Protection Division [the RPD] dated August 21, 2019 [the Decision], refusing the Applicants' claims for refugee

protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] As explained in greater detail below, this application is allowed, as I find that the RPD did not conduct a reasonable assessment of the *sur place* claim related to fear of religious persecution.

II. **Background**

[3] The Applicants are a family of Chinese citizens—a husband [the Principal Applicant], wife, and their two adult children. They fled China in 2012 and sought refugee protection in Canada on the basis that they have a well-founded fear of persecution for reasons of political opinion. Their allegations are as follows.

[4] The Applicants operated a shrimp farm in Jiangmen, Guangdong, China. On September 19, 2011, the local government informed the Principal Applicant that the farm would be expropriated. The local government offered him compensation for the expropriation, but he considered it to be far below market value.

[5] People in the Applicants' village complained to the local government. The local government instructed the villagers that they should accept the original offer of compensation and that they would be provided with additional compensation in the future.

[6] Not trusting this promise of future compensation, the Principal Applicant, his wife and a group of about one-hundred other villagers traveled to the district government offices to protest the compensation on December 12, 2011. Officers from the Public Security Bureau [PSB] arrived and assaulted the villagers. The Principal Applicant and his wife escaped and hid with a relative.

[7] That day, the PSB went to the Principal Applicant's home and left a summons with the Principal Applicant's father, requiring the Principal Applicant and his wife to report to the PSB. The PSB arrested 16 villagers at the district government offices. Ten of these villagers were released, but six were sentenced to three years' imprisonment. The Principal Applicant's children were subsequently suspended from school due to their parents' activities.

[8] The Applicants fled China with the help of a smuggler. They travelled using their own passports through Hong Kong to the United States on a fraudulent visa. The Applicants arrived in the United States on February 25, 2012 and then entered Canada on March 3, 2012. They filed refugee claims on March 9, 2012.

[9] The Applicants' claim was originally rejected by the RPD in a decision dated March 11, 2014. They challenged this decision, and on April 15, 2015, Justice Simpson allowed their application for judicial review and returned the matter to a differently constituted panel of the RPD for re-determination (*Zhao v Canada (Citizenship and Immigration)*, 2015 FC 471). Justice Simpson held: (a) that the RPD had made unreasonable credibility findings based on mistakes of fact; and (b) that the RPD made an unreasonable assessment of persecution vs prosecution of the

Applicants, because it considered only the possibility that the Applicants would face a fine and failed to consider evidence that villagers were sentenced to three years in prison for participation in the December 12, 2011 protest.

[10] The Applicants submitted an addendum to their refugee application in 2019, alleging that the Principal Applicant's wife and children have adopted the Christian faith while in Canada and, therefore, they have a well-founded fear that they would face religious persecution if they were to return to China.

III. Decision under Review

[11] Following re-consideration of this matter, the RPD again rejected the Applicants' claim, in the Decision that is the subject of this application for judicial review. The RPD stated that the determinative issues were credibility, persecution vs. prosecution, identification as a Christian, and the well-foundedness of the claims with respect to the issue of Christianity.

[12] The RPD began its analysis by considering the credibility of the Applicants' evidence. It found many contradictions and inconsistencies in the Applicants' testimony and ultimately concluded that they were not wanted by the PSB for protesting against the government.

[13] In the alternative, the RPD found that, if the Applicants' allegations of PSB pursuit were credible, they had not established that they would be persecuted on a Convention ground. The RPD found that the Principal Applicant would face prosecution because he had broken a law of general application with his actions against government officials carrying out their duties. What

concerned the Principal Applicant was the lack of what he considered to be reasonable compensation for the expropriation. The RPD disagreed with his counsel's submission that this would translate into at least perceived political opinion.

[14] The RPD acknowledged that lawful sanctions cannot be imposed in disregard of accepted international standards, but found that the three years of imprisonment that the Principal Applicant may face in China would not offend such standards. The RPD also recognized that the conditions in many Chinese penal institutions are harsh and degrading, but it found that generally institutions accommodate prisoners' basic needs and rights. The RPD noted country condition evidence [CCE] documenting cases of abuse of individuals who protest against land expropriation, but found that there was insufficient evidence that the Applicants themselves would be subject to treatment amounting to persecution.

[15] The RPD therefore concluded that, upon returning to China, the Principal Applicant would not face section 96 persecution and that section 97(1) of IRPA (which protects against a risk to life, or a risk of cruel and unusual treatment or punishment or torture) did not apply.

[16] Next, the RPD assessed whether the Principal Applicant's wife and children have become Christians while living in Canada. It accepted that they were baptised, but it concluded that this was not sufficient to establish their faith.

[17] The RPD evaluated the Principal Applicant's wife's testimony and, based on her hesitancy and lack of substantive responses to the RPD's questions, it found she was not credible in asserting her belief in Christianity.

[18] The RPD found that the children were more forthright in their answers to questions about their religious beliefs. They spoke about spreading the gospel to others and the positive effects that Christianity was having on their lives. Nevertheless, the RPD concluded that there was insufficient credible evidence to persuade it that any of the Applicants are genuine Christians.

[19] The RPD then considered whether, even if the Principal Applicant's wife and children were genuine Christians, they would have a well-founded fear of religious persecution in China. It began by considering the ability of Christians in China to worship in unregistered Churches. Ultimately, it found that the CCE did not show a consistent pattern of persecution, serious harm, or breach of fundamental human rights for unregistered churches or their worshipers. The RPD concluded that in general, the millions of Christians who worship within unregistered Churches in China are able to meet and express their faith as they wish to do.

[20] The RPD also considered evidence regarding registered churches in China, noting that the Applicants attended a Protestant church in Canada and that there are 50,000 registered Protestant churches in China. It observed that, although there was information that authorities targeted unofficial house churches not regulated by the state, this did not appear to be the situation for the state-sanctioned churches.

[21] The RPD therefore concluded that, even if the Principal Applicant's wife and children were genuine Christians, the evidence did not support their fears of religious persecution. On a balance of probabilities, the RPD found that they could worship Christianity upon return to China.

[22] Based on the foregoing analysis, the RPD found the Applicants are not Convention refugees or persons in need of protection.

IV. **Issues and Standard of Review**

[23] The Applicants' Memorandum of Fact and Law articulates the following issues for the Court's consideration:

- A. Did the RPD conduct an unreasonable assessment of the co-Applicants' religious faith and ability to freely practice Christianity in China?
- B. Further and in the alternative, did the RPD make unreasonable credibility findings on the land expropriation issue?
- C. Was the RPD's finding that the Applicants would face prosecution, but not persecution, reasonable?

[24] The parties agree, and I concur, that these issues are to be assessed on a standard of reasonableness.

V. **Analysis**

A. *Claim Based on Religions Beliefs*

[25] The Applicants note that the RPD found the Principal Applicant's wife was not a genuine Christian, because she lacked religious knowledge and gave conflicting evidence about when her children first attended church in Canada. I do not understand the Applicants to be challenging this finding. However, the Applicants take issue with the RPD's assessment of the *sur place* claims of the children, as it appears to have analysed their evidence positively and yet concluded that they too were not genuine Christians.

[26] In comparison to their mother, the RPD found that the children responded in a more forthright manner, referring to their interest in spreading the gospel and, in relation to the son, described him as very precise in providing this information. The RPD referred to the daughter's testimony that, having attended church, she is kinder and less irritable, and her life is smoother. Similarly, her brother testified that he views things in a more positive manner.

[27] I agree with the Applicants that the Decision is unintelligible as to how the RPD moves from those apparently positive assessments of the children's evidence to its conclusion that there was insufficient credible evidence that they are genuine Christians.

[28] I have considered the Respondent's argument that the Decision should be understood as based on the overall adverse credibility conclusions which the RPD reached surrounding the Applicants' testimony. However, for the most part, those adverse findings relate to the evidence

surrounding the pursuit by the PSB resulting from the land expropriation issue. More importantly, those findings relate to the evidence of the mother and father, and not the children. As noted above, while the RPD also concluded that the mother was not credible in asserting that she is a genuine Christian, it is difficult to understand how that conclusion could affect its assessment of the children's evidence, given the RPD's positive comments surrounding that evidence. I note that the children were 28 and 30 years old at the time they testified.

[29] The Respondent points to the fact that the mother testified the children began attending church in July, while their minister's letter stated they started in May. However, the RPD found that this testimony undermined the mother's credibility. It did not conclude that this evidence affected the credibility of the children.

[30] The Respondent also relies on my decision in *Gao v Canada (Citizenship and Immigration)*, 2015 FC 1139 [*Gao*], arguing that the RPD's analysis in the case at hand parallels that which was assessed as reasonable at paragraphs 26 to 27 of that decision:

26 My reading of the jurisprudence is that it is not improper for the Board to engage in religious questioning in an effort to gauge the genuineness of a claimant's beliefs, but that such questioning and resulting analysis must indeed focus on the genuineness of those beliefs and not whether they are theologically correct. This can be a difficult task for the Board, as it is entitled to consider whether the claimant holds a level of religious knowledge that would be expected of someone in the claimant's position but should not reach an adverse conclusion based on minutiae or holding the claimant to an unreasonably high standard of religious knowledge.

27 My conclusion is that the Board approached this task in a defensible manner. The Board was neither subjecting him to a test on religious trivia nor reaching its conclusions based on an assessment of the theological soundness of his responses. Rather, it was posing relatively basic questions and, for the most part, based

its conclusion as to the lack of genuinely held belief not upon an assessment of the correctness of the Applicant's answers but rather upon the Applicant's failure to provide answers or answers of any detail. The Board acknowledged that the Applicant provided some correct answers. However, its conclusion that he is not a genuine Christian, based on his lack of overall knowledge of the Christian religion, is reasonable and consistent with the jurisprudence.

[Respondent's emphasis]

[31] I disagree that this authority supports the Respondent's position. While there are parallels between the analysis explained in *Gao* and the RPD's assessment of the mother's evidence in the case at hand, this does not assist in understanding the RPD's decision with respect to the genuineness of the religious beliefs held by the children.

[32] I therefore find this aspect of the Decision unreasonable. However, this amounts to a reviewable error on the part of the RPD, warranting that the Decision be set aside, only if it also erred in its alternative conclusion that, even if the children were genuine Christian practitioners, their fears of persecution in China on that ground were not well-founded.

[33] The RPD arrived at this conclusion based on its assessment of the CCE. As the Respondent correctly submits, the RPD is owed deference in its weighing of the evidence (see, e.g., *Rosy v Canada (Citizenship and Immigration)*, 2019 FC 15 at para 3). However, the Applicants submit that the RPD committed a reviewable error, in that it based its conclusions on outdated evidence and failed to engage with recent evidence that demonstrated a significant negative change surrounding the treatment of Christians in China.

[34] The Applicants refer to CCE that the Chinese government has been exercising tighter control over religious activities in recent years, having updated relevant regulations in 2017, which came into force in February 2018. While their submissions identify several pieces of documentary evidence to this effect, the Applicants focus in particular on evidence contained in a Response to Information Request dated September 27, 2018 [the 2018 RIR], which they submit is the only piece of evidence referenced by the RPD which post-dates these changes.

[35] The 2018 RIR describes the effects of this change as including extension of government powers to monitor, control and potentially punish religious practice, with sources quoted in the 2018 RIR characterizing the situation as a further clamping down on Christians all over China and representing increasingly serious persecution.

[36] When the RPD references the 2018 RPD, it does so by quoting a passage to the effect that both Guangdong (from which the Applicants come) and Fujian were much more liberal in the 2000s. As such, the RPD cannot be said to have ignored the existence of the 2018 RIR. Indeed, the passage it quotes is consistent with the overall import of the document that the treatment of Christians in China has worsened under the new regulations. However, I agree with the Applicants that the difficulty with the Decision is that it relies principally on older evidence, derives comfort from that evidence that the Applicants could worship Christianity upon returning to China without attracting the attention of the authorities, and provides no analysis as to how the adverse change in country conditions affects that conclusion. In my view, this aspect of the Decision is unintelligible.

[37] I have considered the Respondent's arguments, to the effect that the evidence post-dating the regulatory change in China does not contradict the earlier CCE on which the RPD relies or show a rise in persecution to a level that undermines the Decision. The Respondent notes the 2018 RIR references sources that indicate Christians continue to engage in proselytism in China. This passage refers to the fact of such activities taking place, but not openly and publicly, and only despite the state's efforts to prevent them. The Respondent also refers to a statement that there are no consequences for those who proselytize within the limits imposed by the state regulations [my emphasis]. I find these passages to provide little support to the Respondent's argument that the 2018 regulatory changes in China were immaterial.

[38] I therefore find this aspect of the Decision unreasonable.

B. Claim Based on Political Opinion

[39] The Applicants' claims under sections 96 and 97 of IRPA, related to their political opinion, turn on the land expropriation issue in that they were involved with in China and the allegation that they are being pursued by the PSB. The RPD rejected these claims based on both its adverse credibility findings and its conclusion in the alternative that, even if the Applicants' allegations had been credible, the circumstances they would face upon returning to China would represent prosecution, not persecution, and they would not face treatment that would offend international human rights standards.

[40] Turning first to the RPD's conclusion that the Applicants would face exposure to a non-persecutory law of general application surrounding the land expropriation, the Applicants argue

the RPD erred by failing to recognize that the Chinese government perceived the Applicants to be political dissidents based on their actions in opposition to the government's expropriation plans. The Applicants rely on CCE to the effect that unrest and dissatisfaction with increasing land expropriations are on the rise and that the police are cracking down on protesters, who have been subjected to various forms of abuse. The Applicants therefore argue that there was no reasonable basis for the RPD's finding that their claim lacks a nexus to the Convention ground of political opinion.

[41] On this issue, I agree with the Respondent that the Applicants' arguments do not raise a reviewable error on the part of the RPD. The RPD considered, but rejected, the Applicants' argument that the Principal Applicant's concern about reasonable compensation for expropriation of his farm would translate into at least perceived political opinion. It relied on *Ni v Canada (Citizenship and Immigration)*, 2018 FC 948, in which Justice Walker found a somewhat similar decision by the RPD, in circumstances involving a protest to demand fair compensation for land expropriation, to be reasonable (at paras 25 to 27). Justice Walker cited other authorities, which had similarly upheld conclusions that individuals, who were being sought for involvement in protests to demand fair compensation, were not being sought due to a Convention ground (see *Jiang v Canada (Citizenship and Immigration)*, 2015 FC 486; *Cao v Canada (Citizenship and Immigration)*, 2015 FC 790).

[42] The RPD also considered the CCE that the Applicants pointed to, documenting certain cases of abuse of individuals who protested against land expropriation, including internment in so-called education camps, as well as documentary evidence on adverse Chinese prison

conditions. It found that this evidence did not establish that persons who opposed land expropriation are systematically subjected to treatment amounting to persecution, or that the Applicants themselves would be subjected to persecution or risk of harm. As such, the RPD concluded the Applicants had not made out a claim under either section 96 or section 97 of IRPA. There is no basis to conclude that the RPD overlooked the evidence upon which the Applicants' arguments rely. The RPD's findings are within the range of outcomes that could reasonably be drawn from that evidence.

[43] Having reached this conclusion, it is unnecessary to consider the Applicants' arguments challenging the RPD's adverse credibility findings surrounding their allegations of pursuit by the PSB. Even if those findings were to be overturned, it would not affect the outcome of this application for judicial review, because of the RPD's conclusions that the Applicants' allegations do not engage sections 96 or 97.

VI. **Conclusion**

[44] While I have found the Decision reasonable in its treatment of the Applicants' claims related to political opinion, I have found it unreasonable in its treatment of the religious persecution claims. This application for judicial review must, therefore, be allowed and the matter must be returned to the RPD for redetermination. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-5415-19

THIS COURT'S JUDGMENT is that this application for judicial review is allowed and the matter is returned to a differently constituted panel of the Refugee Protection Division for re-determination. No question is stated for appeal.

“Richard F. Southcott”

Judge

FEDERAL COURT
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