

Federal Court



Cour fédérale

Date: 20210223

Docket: IMM-6996-19

Citation: 2021 FC 166

Ottawa, Ontario, February 23, 2021

PRESENT: Mr. Justice Annis

BETWEEN:

BISANG QIU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant seeks judicial review of the decision from the Refugee Appeal Division (RAD) dated October 29, 2019, which confirmed the refusal of the Applicant's refugee claim as she was found to be neither a Convention refugee nor person in need of protection pursuant to the *Immigration and Refugee Protection Act*, SC 2011, c 27, ss 96–97(1) [IRPA].

[2] For the following reasons, this Court dismisses this application for judicial review.

II. **Background**

[3] The Applicant is a citizen of China and is claiming refugee protection for risk to life or of serious harm from the Public Security Bureau (PSB) for membership to the Falun Gong movement. Specifically, she fears that, if she were to return to China, she will be arrested, detained and subjected to physical and mental abuse by the PSB for joining an illegal organization.

[4] The Applicant alleges that she started Falun Gong in China in 2013 after the breakdown of her marriage and she began suffering from migraines. She asserts that she regularly attended a practice group of Falun Gong until some members were arrested in August 2015, after which she went into hiding at the home of a cousin. She also learned that PSB was searching for her. In October 2015, a smuggler assisted her to enter the United States, subsequent to plans made by the Applicant's mother beginning in January 2014. She then entered Canada and claimed refugee status in January 2017.

[5] The Refugee Protection Division (RPD) denied the Applicant's claim for lack of credibility. The RAD confirmed the decision.

III. **Contested Decision**

[6] From the outset, the RAD indicated it would review the RPD decision on a correctness standard, unless indication to the contrary where the RPD had a meaningful advantage in findings involving the credibility of oral testimony.

[7] It then preliminarily admitted new evidence, consisting of four documents concerning the Applicant's attendance at the April 2018 Falun Gong demonstration. In its consideration, the RAD found that the Applicant could not reasonably have been expected to provide the documents beforehand, as she did not learn of their existence until later. Further, the evidence is new as it refers to events that are contained nowhere else in the record, relevant to the issue of her alleged *sur place* claim and credible insofar as it appears credible on its face and is from a notable website.

[8] The RAD subsequently determined that an oral hearing was not warranted given that the new documents could be considered without said hearing.

[9] On analysis, the RAD first found that the Applicant was not credible in her allegation that the PSB is interested in her for her Falun Gong activities, for reasons that differed from the RPD as the jurisprudential guide on exit from China had been revoked.

[10] Having reviewed the record and conducted its own assessment of the evidence, the RAD found that the claim that the Applicant was able to circumvent airport security while exiting

China on her own passport due to the assistance of a smuggler is lacking in credibility in light of the vagueness and lack of detail about the assistance from the smuggler. The credibility of the allegation was also undermined by the determination that the summons provided was fraudulent when compared to the national documentation package and in considering that, fraudulent documents are readily available and widespread in China. The RAD further drew a negative inference regarding the Applicant's general credibility in submitting a fraudulent document.

[11] The RAD then found that the Applicant had not established the genuineness of her practice on a balance of probabilities. Notably, the Applicant had little knowledge of the philosophy behind the Falun Gong practice and, though the threshold for religious knowledge is low, knowledge is an important component of the practice.

[12] Furthermore, given the inconsistency between the Applicant's generic application form and her *hukou* as to the date of marriage and the living arrangement, and there was no corroborative evidence in the record of the marriage or of the separation from her alleged husband, the Applicant had not established that she was married; the breakdown of which she claims was the impetus to beginning to practise Falun Gong. The RAD, in particular, gave no weight to the *hukou*, establishing that the Applicant was married, given the highlighted inconsistency, and the fact that a fraudulent summons was provided, and fraudulent *hukous* are equally prevalent in China. The impetus for joining the practice was therefore lacking in credibility and it further undermined the claim that the Applicant is a genuine practitioner.

[13] The RAD then noted additional credibility concerns on the Applicant's evidence, taking into account jurisprudence in this regard, on her failure to make reasonable efforts to regularize her status in the United States. In particular, the Applicant's testimony was inconsistent and evolving. This undermined her subjective fear and the credibility of the allegation that she is wanted by Chinese authorities. The RAD therefore drew a negative inference on the alleged persecution.

[14] It subsidiarily found that the Applicant's other corroborative documents—that of her medical booklet indicating she suffered some migraines, a visitation card showing that an individual is imprisoned for involvement in Falun Gong and a letter from a friend in Canada stating that the Applicant is a genuine practitioner—do not establish her claim that she is wanted by the PSB in China or that she initiated her Falun Gong practice there. The documents were given little weight and were found not to overcome the litany of credibility concerns.

[15] With respect to the *sur place* claim, the RAD found that the Applicant had not established her claim. In its analysis, the RAD remarked that the RPD did not err by importing its credibility findings in its assessment. It further noted that it agrees with the RPD's conclusion, but for slightly different reasons.

[16] The RAD notably found on a balance of probabilities that, as the Applicant has alleged that the impetus to join Falun Gong activities in Canada took place as a result of a set of circumstances that occurred in China, which was not credibly established, the Applicant joined the practice group, attended events and learned about the practice only for the purpose of

supporting a fraudulent refugee claim. The RAD further found that the Applicant is not presently a genuine adherent of Falun Gong and, as a result, there's a minimal likelihood that she would practise upon return in China.

[17] The *sur place* claim also is not supported by the new evidence on the Applicant's participation in the April 2018 Falun Gong demonstrations. The Applicant is not mentioned and is not identifiable in the documents provided, and the documentation relied upon purports to Chinese censorship and facial recognition in airports—this being no longer in use according to documentary evidence. Furthermore, there is no evidence in the record that the Applicant or her relatives in China have been contacted or suffered ill effects due to the Applicant's participation at the 2018 demonstration. The evidence was thus insufficient to indicate that the activities in Canada have come to the attention of the Chinese authorities.

[18] In conclusion, though concerns arose on some of the RPD's findings, the RAD found the Applicant lacked credibility and confirmed the decision. The appeal was dismissed.

IV. **Issues**

[19] The Applicant argues that the issues are as follows, which the Court will deal with seriatim:

- 1) Did the RAD breach natural justice by failing to give the Applicant notice before raising new and determinative credibility issues not identified by the RPD?
- 2) Further and in the alternative, did the RAD make unreasonable credibility findings?; and

- 3) Did the RAD conduct an unreasonable forward-looking analysis and fail to call a hearing pursuant to section 110(6) of the *IRPA*?

V. **Standard of Review**

[20] In accordance with the decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, the framework to determine the standard of review is based on the presumption that an impugned decision is reasonable.

[21] A reasonable decision requires internally coherent reasoning and should be justified in light of the legal and factual constraints that bear on the decision such that the decision as a whole is transparent, intelligible and justified (*Ibid* at paras 15, 75, 83, 85–86, 99).

[22] On judicial review, the court’s role is to review, not to substitute the administrative decision maker, attempt to ascertain a range of possible conclusions or determine the correct conclusion, nor conduct a *de novo* analysis (*Ibid* at para 83). Absent exceptional circumstances, the court is not to intervene on factual findings, including findings of fact regarding credibility as is the principal concern on issue two in the present case (*Ibid* at paras 125–26). Where there is some probative evidence to support the finding of fact, without clear errors or speculation, and no process forms of error committed in the course of the assessment (e.g. failing to consider relevant tendered evidence), the finding is not subject to the court’s interference. Further, a reviewing court must not require exactitude such that an administrative tribunal must include all arguments or other preferred details; this is not a reason to set aside a decision (*Ibid* at paras 91–

92). The onus is on the party who contest the decision to demonstrate that it is not reasonable (*Ibid* at para 100).

[23] The presumption of reasonableness does not, however, apply to a breach of natural justice, as argued in the first issue, which is reviewable on the standard of correctness (*Ibid* at para 23; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43).

[24] The Federal Court must then review the impugned decision under the standard of correctness for the first issue and, for the remainder, under the standard of reasonableness.

VI. Analysis

A. *Did the RAD breach natural justice by failing to give the Applicant notice before raising new and determinative credibility issues not identified by the RPD?*

[25] In the present matter, the RAD considered—as the RPD—the Applicant’s credibility in her allegation that the PSB is interested in her for her Falun Gong activities, the genuineness of her practice on a balance of probabilities and her *sur place* claim. The RAD additionally made remarks on the Applicant’s failure to claim asylum in the United States.

[26] The Applicant submits that the RAD breached procedural fairness as the Applicant was not given the opportunity to respond to a number of issues alleged not to have been previously raised, including:

- a) The vagueness of her testimony about how a smuggler assisted her to leave China;
- b) The authenticity of the summons;
- c) Inconsistency between the Applicant's generic application form and the *hukou* as to the date of her marriage;
- d) The weight to ascribe to a prison visiting card on the basis of no evidence linking her to the prisoner; and
- e) The credibility of her explanation for not seeking asylum in the United States.

[27] However, the jurisprudence is clear that where credibility is disputed, a supplementary finding on credibility does not amount to a new issue giving rise to a right of notice and response (*Smith v Canada (Citizenship and Immigration)*, 2019 FC 1472 at para 31, citing *Nuriddinova v Canada (Citizenship and Immigration)*, 2019 FC 1093 at paras 47–48; *Yimer v Canada (Citizenship and Immigration)*, 2019 FC 1335 at para 17; *Corvil v Canada (Citizenship and Immigration)*, 2019 FC 300 at para 13).

[28] Furthermore, it is well established that additional findings grounded in the record or derived from information known to an applicant is not a new issue in breach of procedural fairness (*Sary v Canada (Citizenship and Immigration)*, 2016 FC 178 at paras 30–31 [*Sary*]; *Azalie v Canada (Citizenship and Immigration)*, 2008 FC 517 at paras 26–28).

[29] The determinative issue before the RPD and on appeal was credibility. To this point, the RAD summarized its position at paragraph 3 of its decision, indicating that “the Appellant is not credible with respect to core allegations of her claim.”

[30] Notwithstanding the above, the alleged new issues were indeed raised expressly or derivative to the central determinations made by the RPD and advanced by the Applicant on appeal. In considering the principal credibility concerns on appeal, the RAD was “entitled, and indeed obliged to review and assess the evidence afresh” (*Ibrahim v Canada (Citizenship and Immigration)*, 2016 FC 380 at paras 26–30 [*Ibrahim*]).

[31] Of the purported new issues advanced by the Applicant, the circumstances surrounding her exit from China and the authenticity of the summons were addressed by the RPD and formally part of the appeal.

[32] In regards to the issues of inconsistency between the Applicant’s general application form and the *hukou*, and the prison visitation card, these were supplementary to the principal findings on credibility. The first issue pointed to an inconsistency in the Applicant’s narrative relevant to her genuineness of her practice of Falun Gong, and the second went to corroboration on whether she is wanted by the PSB or whether she initiated her Falun Gong practice in China. “[P]ointing out [a] contradiction [or] referenc[ing] to another piece of evidence in the tribunal’s file which support[s] the RPD’s findings on [the applicant’s] lack of credibility” is not a challenge on a basis of fairness grounds (*Sary* at para 31).

[33] The remaining issue advanced by the Applicant, pertaining to her failure to seek asylum in the United States, is the sole additional credibility finding and is acknowledged as such by the RAD. The issue was, regardless, specifically addressed during the RPD hearing and contained within the evidentiary record (similar to the circumstances in *Ibrahim*, cited above). Additionally, the RAD provided reasons for not providing notice on the issue in question in guidance from case law, articulating the principles mentioned above, that bears repeating:

[30] The Federal Court has found that it is neither unfair nor improper for the RAD in considering the very credibility issue raised by the Appellant, to review the evidence and come to its own conclusions. This is consistent with its role under *Huruglica*. In particular, in reviewing the record, including the transcript of the proceedings, the RAD is able to make credibility findings where there are inconsistencies that defy a rational explanation. Similarly, the RAD is able to find an additional basis to question the Appellant's credibility using the evidentiary record before the RPD, and this does not necessarily raise a new issue as the Appellant's credibility was already in question before the RPD. In finding additional evidence in the record to undermine the Appellant's credibility, the Appellant cannot claim to be taken by surprise when the RAD examines the very documents the Appellant submitted to the RPD. It is with this in mind that I note the following additional concerns with the Appellant's evidence, which further undermines her credibility and core aspects of her claim.

[Footnotes omitted.]

[34] In the circumstances, the RAD remarked that the Applicant's failure to make reasonable efforts to regularize her status in the United States—considering the inconsistent and evolving narrative on this topic in the Basis of Claim and during the RPD hearing—denoted a lack of subjective fear and credibility as to her allegation that she is wanted by the PSB for her Falun Gong practice.

[35] This consideration is well within the overarching determinative issue on appeal, that of credibility, and in the particular circumstances it follows a host of credibility concerns notably on the topic of the credibility of the allegation that the PSB is interested in the Applicant.

Irrespectively, the jurisprudence supports the conclusion that this additional credibility finding is not a new issue such that there would be a requirement to notify the Applicant and allow further submissions. The RAD was permitted to undertake the exercise it entertained and it cannot be said that the highlighted issues were unknown and unfair to the Applicant.

[36] As such, the Court finds no breach of procedural fairness.

B. *Did the RAD make unreasonable credibility findings?*

[37] The RAD's conclusion that the Applicant is not a genuine Falun Gong practitioner was based on credibility findings pertaining to the PSB's interest in the Applicant for her Falun Gong activities, circumvention of airport security with the aid of a smuggler, the establishment of the breakdown of her marriage leading her to join the movement in China and her failure to seek asylum in the United States for nearly a year and a half.

[38] The Applicant submits that the substantive credibility findings, namely on the knowledge on the smuggler's assistance, the authenticity of the summons, the Applicant's religious knowledge and the failure to seek asylum in the United States, are unreasonable. In support of this position, the Applicant refers this Court to a number of conflicting case law to negate the various findings by the RAD.

[39] First and foremost, credibility findings can affect the entirety of a claim, including the appreciation of documentary evidence. It is not sufficient to identify different conclusions based on the evidence; rather the onus requires proof that the findings are abusive, arbitrary or without regard to the evidence (*Zhu v Canada (Citizenship and Immigration)*, 2013 FC 1139 at paras 47, 49).

[40] Moreover, as previously stated, absent exceptional circumstances, the Court is not to intervene on credibility findings derivative from factual findings where founded on some probative evidence.

[41] In the present case, the RAD found the Applicant not credible as to the core allegations of her claim. Though the RAD made a number of credibility findings, the determinative one—for all intents and purposes—relates to the credibility of the Applicant as a Falun Gong practitioner, particularly on the impetus for joining the practice. The entire claim is anchored by this fact.

[42] The RAD in this respect was not convinced based on the Applicant's general testimony about Falun Gong exercises and practice that she has established that she is a genuine Falun Gong practitioner on a balance of probabilities. The RAD also remarked that the Applicant inaccurately described the purpose of righteous thoughts. While the threshold for religious knowledge is low, the objective evidence established that knowledge is an important component of Falun Gong and it is alleged that the Applicant practised daily since November 2013.

[43] The RAD also found that the Applicant had not established on a balance of probabilities that she was married, the breakdown of which is claimed to be the impetus to beginning to practise Falun Gong in China. It remarked in this regard that there was an inconsistency between the dates of marriage stated in her *hukou* and the generic applicant forms, that the *hukou* indicated that she resided with her grandmother who is the head of the household and there is no evidence that her husband resided with them, there was an absence of corroborative evidence on the marriage or the separation, and that fraudulent *hukous* were prevalent in China. As a result, the impetus for joining the movement, i.e. the breakdown of her marriage, was lacking credibility and this further undermined the claim that the Applicant is a genuine Falun Gong practitioner.

[44] The Applicant submits that the RAD conducted an unreasonable assessment of the Applicant's identity as a Falun Gong practitioner based on religious knowledge where multiple interpretations are possible. It is argued that the Applicant's testimony in fact corresponds with the statement by the founder of the practice, Master Li. Additionally, the Applicant remarks that though the relevant page of the *hukou* is dated 2007, the page was updated afterwards to change her status to married, which is found under the PSB stamp. These nuances do not figure in the translation provided to the RAD.

[45] The RAD's reasons in the circumstances cannot, however, be described as an exception or a speculative finding meriting rejection by the Court, particularly in regards to the finding of a failure of the Applicant to corroborate with evidence, or to provide an explanation for not doing so, on the core of her claim—her identity as a Falun Gong practitioner.

[46] Absent the consideration on the inconsistency relating to the date of marriage from the *hukou*, the principal concern advanced in the RAD's analysis is the lack of evidence. As the RAD indicated at para 28 of its decision, "[t]here is no credible and trustworthy corroborative evidence in the record of the marriage, such as a marriage certificate, or for that matter, of the separation from her alleged husband."

[47] Where a refugee claimant makes a statement—particularly when determinative on the claim—sufficient and probative evidence in support should follow or, in the alternative, evidence of genuine efforts to obtain same, to warrant the benefit of the doubt that the statement was credible (*Kallab v Canada (Citizenship and Immigration)*, 2019 FC 706 at paras 156–57, citing *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 at para 5 (CA), *IRPA*, s 170(h), *Refugee Protection Division Rules*, SOR/2012-256, s 11 and UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, HCR/1P/4/ENG/REV.3, December 2011 at paras 203–05).

[48] The credibility of the claimant as a Falun Gong practitioner is highly significant and determinative on the refugee claim. It was open to the RAD to reject the sincerity of the Applicant's adherence to Falun Gong (*Qi v Canada (Citizenship and Immigration)*, 2020 FC 400 at para 18). The Court therefore finds no basis to intervene in this respect.

[49] This credibility finding is definitive on the claim. Bearing in mind the jurisprudence on credibility, this finding taints the entirety of the Applicant's claim. The Court nonetheless

provides the following comments on particulars raised, namely relating to findings on the knowledge on the assistance of the smuggler, the authenticity of the summons and the failure to seek asylum in the United States.

[50] In analyzing the credibility of the Applicant's allegation that the PSB is interested in her for her Falun Gong activities, the RAD considered the credibility of her exit from China and the authenticity of the summons provided.

[51] The RAD found that, with regard to the assistance of the smuggler, the Applicant's evidence was vague and lacking detail and, as a result, that the claim that she was able to circumvent airport security while exiting China on her own passport due to the assistance of a smuggler is lacking in credibility. In particular, the Applicant did not know what assistance was provided to her, nor what was done for her other than instructions to follow, facilitation of the journey to Canada and completion of a visa application. There was also no evidence indicating that officials were bribed, no explanation on how the smuggler was able to arrange for her exit through the airport and it was speculative to find that police records were deleted in advance.

[52] Jurisprudence supports the relevancy of testimony about the smuggler's methods (*Zhang v (Citizenship and Immigration)*, 2018 FC 1210 at para 38). The Federal Court has also upheld findings that it was unlikely the claimant was in fact wanted by authorities where vague evidence was provided on avoidance of exit controls (*Li v Canada (Citizenship and Immigration)*, 2018 FC 877 at paras 20–21 [*Li* 2018]; *Lin v Canada (Citizenship and Immigration)*, 2017 FC 1175 at para 42). The Court likewise finds no exceptional reasons to intervene on this credibility finding.

[53] As to the authenticity of the summons, the RAD found that it was not genuine as the identifier prior to naming the individual concerned, the structure, format, characters and the date written in Arabic numerals were not consistent with the sample summons in the national documentation package. Though it appears the RAD relied on a previous version of the sample document, the only distinction put to the Court between the current and previous version of the sample is the absence of an identifier. This is not a reason to set aside a decision. Absent the singular inconsistency on the identifier, the other inconsistencies remain and they are sufficient to conclude that the summons is fraudulent; deference should be given to the RAD in this regard (*Gong v Canada (Citizenship and Immigration)*, 2020 FC 163 at para 38 [*Gong*]).

[54] Lastly, the RAD found that the Applicant lacked subjective fear in light of delay or failure to make efforts or inquire to seek asylum in the United States before arriving in Canada. The Applicant's explanation for failure to do so, that she did not have her identity documents or she took too long to claim asylum, was considered unreasonable. The RAD remarked in particular that the Applicant was more than capable of making inquiries once she was allegedly out of time. Furthermore, the Applicant knew she could claim protection when arriving in the United States and her mother was planning her exit more than one year before she fled China. The RAD was entitled to make such a finding (*Saka v Canada (Citizenship and Immigration)*, 2020 FC 991 at para 10; *Mirzaee v Canada (Citizenship and Immigration)*, 2020 FC 972 at para 51; *Durojaye v Canada (Citizenship and Immigration)*, 2020 FC 700 at para 9) and the Applicant has not demonstrated exceptional circumstances that would justify the Court's intervention in this regard.

[55] The Court concludes that the RAD's credibility findings are internally coherent, rational and justified in light of the above reasons. In effect, the Applicant is requesting the Court to reweigh the evidence, which is not its role on judicial review.

C. *Did the RAD conduct an unreasonable forward-looking analysis and fail to call a hearing pursuant to section 110(6) of the IRPA?*

[56] The RAD reasoned that since the Applicant was not a Falun Gong practitioner in China and the impetus for joining and continuing practice of Falun Gong in Canada took place as a result of a set of circumstances which occurred in China and is based on her adherence to her alleged practice in China, "the A[pplicant] joined a Falun Gong practice group, attended Falun Gong events, and has learned about the practice of Falun Gong only for the purpose of supporting a fraudulent refugee claim. In the context, as noted above, and on the basis of the totality of evidence disclosed, [the RAD] f[ound] that the A[pplicant] is not presently a genuine adherent of Falun Gong. [The RAD] further f[ound] that the likelihood that she would practice Falun Gong on her return to China is minimal, given the finding that she is not a genuine practitioner" (RAD decision at para 44).

[57] Further, while the evidence on the Applicant's participation at the 2018 demonstration in Canada was admitted, it was discounted on the basis that it did not identify the Applicant, nor establish on a balance of probabilities that her Falun Gong activities in Canada have come to the attention of Chinese authorities. The RAD specified at paragraph 53 of its decision that "the Appellant is not a genuine Falun Gong practitioner and that she has not provided sufficient evidence that her Falun Gong activities have come to the attention of the Chinese authorities."

[58] In situations where a claimant's assertion to have been a victim of religious persecution abroad is found to be a fabrication, the RAD may require a higher degree of reliability. See *Li v Canada (Citizenship and Immigration)*, 2012 FC 998 at para 32 [*Li* 2012] relating to the evidentiary threshold on *sur place* claims:

Where, as here, a claimant's assertion to have been the victim of religious persecution abroad is found to be a fabrication, it is completely reasonable for the RPD to require a much higher degree of proof of the sincerity of the applicant's beliefs and practice in support of a *sur place* claim than might be required where the mere fact of apostasy might lead to persecution or where the Board believes the claimant to have been the victim of religious persecution abroad. Otherwise, it would be far too easy to succeed in a fraudulent claim: a dishonest applicant would need only to join a church and study the religion to advance a *sur place* claim. Proof of joining a church and knowledge of its precepts, however, does not equate to proof that the individual would be at risk if returned to his or her country of origin. In the context of a country such as China, where persecution is practiced against Christians not for apostasy but for the practice of their religion, the claimant must satisfy the RPD that he or she will continue to practice his or her faith in China.

[59] The Applicant submits that this determination on the new *sur place* evidence is unreasonable and the RAD unreasonably failed to call a hearing in this respect.

[60] As in *Su v Canada (Citizenship and Immigration)*, 2013 FC 518 at para 17, "there is nothing unreasonable in finding that a few letters and pictures do not establish that a claimant is a genuine adherent to a religion", particularly where the Applicant is found to have made a fraudulent refugee claim. The burden to establish that a claimant's practice has come to the attention of the foreign state's authorities lies with the claimant (*Li* 2018 at para 30).

[61] Moreover, the RAD had significant and legitimate credibility concerns with the claim, both on the Applicant's identity as a Falun Gong practitioner and being wanted by the PSB. The RAD found that the Applicant was not credible and was not a genuine practitioner of Falun Gong. It was open to the RAD to not consider further the *sur place* claim (*Gong* at para 52; *Jiang v Canada (Citizenship and Immigration)*, 2012 FC 1067 at paras 26–28; *Li* 2012).

[62] The Court thus finds the RAD's *sur place* analysis reasonable. Further, as the new evidence was not determinative on the appeal and thus not meeting the conditions under *IRPA*, s 110(6), the Court additionally finds reasonable the RAD's refusal to hold a oral hearing. It was open for the RAD to conclude that the new documentary evidence would not justify allowing or rejecting the refugee claim, in particular the evidence did not substantiate the Applicant's fear of persecution by Chinese authorities or her *sur place* claim (*Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 71).

[63] In *obiter*, the Court states its concern with the policy and logic underlying the general acceptance of evidence based on *sur place* claims. Such evidence appears to infringe the rule against admission of self-serving or self-made evidence, without an explanation why it should be accepted. This evidentiary rule is premised on the ease of fabrication which makes it unreliable.

[64] Nor is it clear what motivates persons claiming to be refugees to expose themselves to the authorities of their country of origin by engaging in atypical activities in a manner to be publically captured as highly reliable demonstrative evidence. This logically raises the question as to why claimants would add to their risk on removal to their country of origin during the

relatively short time required to complete the RPD determination. It is fair to suggest that the reasonable person would query why claimants would add to their risk before the determination of their status in Canada, unless it is not really a risk at all, i.e. the policy ground of fabrication to reject self-made evidence.

[65] Given the inability to understand what would motivate refugee claimants to engage in activities that appear to add to their risk if their claim fails, claimants relying on *sur place* evidence should be required to provide a reasonable explanation why they could not have delayed such activities until completion of the RPD proceedings.

VII. Conclusion

[66] For the above-mentioned reasons, the Court dismisses this application for judicial review.

JUDGMENT in IMM-6996-19

THIS COURT'S JUDGMENT is that:

1. For the above-mentioned reasons, this application for judicial review is dismissed.

“Peter Annis”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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