

Federal Court



Cour fédérale

Date: 20210326

Docket: IMM-7032-19

Citation: 2021 FC 271

Ottawa, Ontario, March 26, 2021

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

LI YONG GAO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Li Yong Gao, seeks judicial review of a decision of the Refugee Appeal Division (“RAD”) confirming the determination of the Refugee Protection Division (“RPD”) that the Applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27

(“*IRPA*”). The RAD rejected the Applicant’s claim for refugee protection because it found that he was not credible and did not establish a *sur place* claim.

[2] The Applicant submits that the RAD’s decision is unreasonable. In making its credibility finding, the Applicant asserts that the RAD failed to address the Applicant’s motives for joining Falun Gong, and it overzealously relied upon the Applicant’s lack of knowledge concerning Falun Gong. The Applicant further submits that the RAD unreasonably dismissed his *sur place* claim.

[3] For the reasons that follow, I find that the RAD’s decision is reasonable. I therefore dismiss this application for judicial review.

II. Facts

A. *The Applicant*

[4] The Applicant is a 48-year-old male who is a citizen of China. He claims to be a Falun Gong practitioner and fears persecution from state actors in China based on his religious belief.

[5] In November 2016, the Applicant developed stomach pains. He attempted to treat his symptoms with medicine but was unsuccessful in relieving them. In May 2017, the Applicant’s friend, Mr. Xiao Bin Wang, recommended that the Applicant practice Falun Gong to manage his pain. Mr. Wang taught the Applicant Falun Gong practices, and these practices improved his

health. In July 2017, the Applicant joined a group of fellow Falun Gong practitioners to expedite his recovery.

[6] In response to the Chinese government's denunciation of Falun Gong, the Applicant's group decided to distribute leaflets defending the practice. On December 25, 2017, after distributing leaflets with the group, the Applicant and Mr. Wang were detained by the police and interrogated about their connection to Falun Gong. The two denied any involvement and were released the next morning. The police informed the Applicant and Mr. Wang that they would be investigated and could be summoned to appear.

[7] The Applicant decided to flee China out of fear of persecution. On April 7, 2018, the Applicant arrived in Canada using the services of a smuggler, where he ultimately made a claim for refugee protection.

B. *RPD Decision*

[8] In a decision dated July 19, 2019, the RPD denied the Applicant's claim for refugee protection because it found that he was not credible. The RPD made the following findings, among others:

- When the RPD asked the Applicant what it means to send righteous thoughts, a central concept in Falun Gong, the Applicant answered that it means not to involve himself with other cults and only focus on Falun Gong. The RPD held that this answer is inconsistent with the objective evidence, as sending righteous

thoughts involves “reduc[ing] the evil beings’ persecution of Dafa, Dafa disciples, and the people of the world.”

- The Applicant’s testimony concerning his favourite chapter of the Zhuan Falun, the foundational text of Falun Gong, was vague and non-responsive because he could not explain any personal connection or meaning to the chapter.
- The Applicant was unable to recite all the verses associated with the fourth exercise that he practices, yet the Applicant claimed to have been practicing those exercises regularly for over two years.
- The Applicant’s supporting documents regarding his practice of Falun Gong in Canada — one letter of support from a fellow practitioner in Canada affirming the Applicant’s religious identity, and photographs of the Applicant practicing Falun Gong and attending Falun Gong protests in Canada — did not establish that the Applicant is a genuine Falun Gong practitioner.

[9] The RPD dismissed the Applicant’s *sur place* claim, as it found that the Applicant’s Falun Gong activities in Canada had likely not come to the attention of the authorities in China.

C. *Decision Under Review: RAD Decision*

[10] The Applicant appealed the RPD's decision to the RAD. In a decision dated October 29, 2019, the RAD confirmed the RPD's determination and dismissed the Applicant's appeal. In particular, the RAD made the following findings:

- The RPD erred by not assessing the Applicant's alleged Falun Gong activities in China. The RAD held, however, that the Applicant's testimony on those events was not credible, as the Applicant provided convoluted testimony regarding whether he learned the verses associated with the exercises in China or in Canada.
- The RPD correctly drew a negative credibility inference from the Applicant's inability to explain righteous thoughts. The RAD noted that Falun Gong is "a knowledge-based faith" and found that the Applicant's lack of knowledge of righteous thoughts does not reflect the length and depth of his practice.
- The RPD correctly drew a negative credibility inference from the Applicant's vague and non-responsive answer regarding his favourite chapter in the Zhuan Falun.

[11] The RAD also found that the RPD erred in dismissing the Applicant's *sur place* claim, as the RPD accepted that the Applicant engaged in public practice and demonstrations in Canada. The RAD held, however, that the Applicant's supporting documents regarding his practice of

Falun Gong in Canada failed to establish that he faces a forward-looking risk of persecution in China.

[12] With respect to the Applicant's support letter, the RAD found the letter is not reliable or probative because there is no description of how its author was able to assess the genuineness of the Applicant's practice. With respect to the photographs of the Applicant at a protest, the RAD found the evidence only establishes that the Applicant attended a single protest. The RAD further noted that the Applicant's family members in China have not been approached by the authorities since the Applicant arrived in Canada. Considering these findings, the RAD dismissed the Applicant's *sur place* claim.

III. Issues and Standard of Review

[13] I find that this application for judicial review raises the following issues:

A. *Did the RAD unreasonably find that the Applicant is not credible?*

B. *Did the RAD unreasonably dismiss the Applicant's sur place claim?*

[14] It is common ground between the parties that the standard of review applicable to the RAD's decision is reasonableness. I agree (*Akintola v Canada (Citizenship and Immigration)*, 2020 FC 971 at para 7, citing *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("Vavilov")).

[15] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at para 13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[16] Where a decision provides reasons, those reasons are the starting point for review (*Vavilov* at para 84). A decision's reasons need not be perfect; as long as the reasons allow the reviewing court to understand why the decision-maker made its decision and determine whether the conclusion falls within the range of acceptable outcomes, the decision will normally be reasonable (*Beddows v Canada (Attorney General)*, 2020 FCA 166 at para 25, citing *Vavilov* at para 91). Conversely, where a decision-maker's rationale for an essential element of the decision is not addressed in the reasons and cannot be inferred from the record, the decision will normally be unreasonable (*Vavilov* at para 98).

[17] For a decision to be unreasonable, the applicant must establish that the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). A reviewing court must refrain from reweighing or reassessing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Findings of credibility are accordingly provided "significant deference" upon review (*Azenabor v Canada*

(*Citizenship and Immigration*), 2020 FC 1160 (“*Azenabor*”) at para 6, citing *N’kuly v Canada (Citizenship and Immigration)*, 2016 FC 1121 at para 21).

IV. Analysis

A. *Did the RAD unreasonably find that the Applicant is not credible?*

[18] The Applicant submits that the RAD unreasonably found that he is not a genuine Falun Gong practitioner because: (i) the RAD failed to address the Applicant’s motivation for joining Falun Gong; and (ii) the RAD overzealously relied on the Applicant’s lack of knowledge to determine his religious identity. I shall address each of these arguments respectively.

(1) The RAD failed to address the Applicant’s motivation for joining Falun Gong

[19] The Applicant submits that because his testimony concerning his motivation for joining Falun Gong is presumed to be true, it was unreasonable for the RAD to determine that the Applicant is not credible without addressing that testimony (*Maldonado v Canada (Minister of Employment & Immigration)*, [1979] FCJ No 248, [1980] 2 FC 302 (FCA) (“*Maldonado*”) at para 5; *Vodics v Canada (Minister of Citizenship and Immigration)*, 2005 FC 783 at para 11).

[20] The Applicant notes that motivation is a relevant consideration in determining the genuineness of one’s identity (*Chen v Canada (Citizenship and Immigration)*, 2015 FC 823 (“*Chen*”) at paras 6-9; *Gan v Canada (Citizenship and Immigration)*, 2015 FC 693 (“*Gan*”) at paras 6-7). According to the Applicant, motivation is an especially pertinent consideration in the

case at hand because the RAD cannot reasonably accept both that the Applicant's motivation for joining Falun Gong is true and that the Applicant acquired knowledge about Falun Gong in Canada to bolster his claim, as these findings contradict one another.

[21] In my view, the RAD reasonably assessed the events that allegedly occurred in China and determined that the Applicant's motivation for joining Falun Gong was not credible, despite not addressing that motivation explicitly. The presumption of truth for a claimant's testimony as articulated in *Maldonado* is not absolute; rather, it may be rebutted if there is a "valid reason" to doubt the claimant's truthfulness (*Braveus v Canada (Citizenship and Immigration)*, 2020 FC 1153 at paras 10-12). The RAD exemplified that it had good reason to discount the truthfulness of the Applicant's testimony concerning the events alleged to have occurred in China by noting its inconsistencies. In particular, the RAD noted that the Applicant initially claimed to have learned the Falun Gong verses from a friend in Canada and the exercises from his friend in China, but later stated that he learned the verses in China but did not remember them until he came to Canada. The RAD further noted that later in oral testimony, the Applicant explained that he could not recite the verses entirely while he was in China.

[22] Considering the significant deference afforded to credibility findings upon review, I find that it was reasonable for the RAD to rely on the above inconsistencies in finding the Applicant not credible (*Azenabor* at para 6; *Vavilov* at para 125). As noted by the Respondent, a general negative credibility finding "can extend to all relevant evidence provided by an applicant" (*Alizadehvakili v Canada (Citizenship and Immigration)*, 2018 FC 165 at para 34, citing *Lawal v Canada (Citizenship and Immigration)*, 2010 FC 558). In light of the RAD's finding that the

Applicant's testimony concerning the events in China negatively impacted his credibility overall, I can infer that the RAD reasonably extended this finding to the Applicant's testimony concerning his motivation for joining Falun Gong.

[23] While I agree with the Applicant that his motivation for joining Falun Gong is a relevant consideration in determining his religious identity, I am not persuaded that it was a consideration necessary for the RAD to address explicitly. In both the cases cited by the Applicant as authority for this proposition, *Chen* and *Gan*, the RPD found it implausible that the claimants would risk the consequences inherent in joining Falun Gong, rather than finding a less perilous solution to their health problems (*Chen* at para 14; *Gan* at paras 11-12).

[24] In the case at hand, the RAD found that the Applicant's motivation for joining Falun Gong was not credible due to inconsistencies in the Applicant's testimony. This finding is different from finding that the Applicant's motivation is implausible. Furthermore, neither *Chen* nor *Gan* stand for the proposition that the RAD was required to address the Applicant's motivation. Simply because it was unreasonable for the RPD to find the claimants' motivations implausible in those cases does not entail that it was unreasonable for the RAD not to address the Applicant's motivation in this case.

- (2) The RAD overzealously relied on the Applicant's lack of knowledge to determine his religious identity

[25] The Applicant submits that finding he obtained knowledge of Falun Gong in Canada to bolster his claim requires a high standard of proof, as it raises a question of intent to deceive

(Ren v Canada (Citizenship and Immigration), 2015 FC 1402 at para 23, citing *Huang v Canada (Citizenship and Immigration)*, 2012 FC 1002 (“*Huang*”) at para 15). In contrast, the Applicant asserts that the level of knowledge required to ground sincerity of belief is relatively low (*Huang* at para 15). According to the Applicant, the RAD failed to consider these thresholds and instead impugned the Applicant’s credibility based on “preconceived expectations of knowledge of certain very specific facts” (*Thelusma v Canada (Citizenship and Immigration)*, 2018 FC 612 at para 27).

[26] In my view, the RAD’s conclusion that the Applicant is not a genuine Falun Gong practitioner based on his lack of religious knowledge is justified, transparent, and intelligible (*Vavilov* at para 99). Contrary to the Applicant’s submissions, the RAD relied upon numerous, relevant considerations in making this determination.

[27] First, the RAD found that the Applicant was unable to adequately explain his understanding of righteous thoughts, which the RAD held is a central concept in Falun Gong. I find that it was reasonable for the RAD to impugn the Applicant’s credibility for being unable to articulate this rudimentary concept of his faith (*Zheng v Canada (Citizenship and Immigration)*, 2019 FC 731 at para 17, citing *Wang v Canada (Citizenship and Immigration)*, 2018 FC 668 at paras 29-39). Furthermore, I find that the RAD also reasonably rejected the Applicant’s explanation that his lack of knowledge was due to his minimal literacy and education, as the Applicant claims to study with the assistance of others, not in isolation.

[28] Second, the RAD relied upon the Applicant's inability to explain why his favourite chapter of the Zhuan Falun is meaningful to him. In my view, this approach is reasonable because it relies upon open-ended questions about how the Applicant applies the principles of Falun Gong to his daily life, rather than a process of "trivia" (*Jia v Canada (Citizenship and Immigration)*, 2016 FC 33 at para 18; *Zhang v Canada (Citizenship and Immigration)*, 2012 FC 503 at para 12). As the Applicant's favourite chapter of the Zhuan Falun is the only one that the Applicant claims to have read, I find that it was reasonable for the RAD to impugn the Applicant's credibility based on his inability to convey a personal connection to that chapter.

[29] Third, the RAD took issue with the Applicant's inability to recite the verses to his routine practices at the RPD hearing. At the time of the RPD's hearing, the Applicant claimed to have regularly practiced for over two years the four exercises that he was asked to recite. I therefore find that it was reasonable for the RAD to impugn the Applicant's credibility by determining that his knowledge of Falun Gong was not commensurate with the duration and depth of his claimed religious activities (*Qi v Canada (Citizenship and Immigration)*, 2020 FC 400 ("*Qi*") at para 18; *Gao v Canada (Citizenship and Immigration)*, 2017 FC 1156 ("*Gao*") at para 29).

[30] Finally, I am not persuaded by the Applicant's argument that the RAD unreasonably raised the threshold of knowledge required of a genuine Falun Gong practitioner by distinguishing Falun Gong as a "knowledge-based faith." When the RAD's decision is read as a whole, I find that the RAD reasonably considered the particulars of the religion and found that the Applicant's knowledge was not commensurate with his alleged experience. This

determination follows an internally coherent and rational chain of analysis and is justified in relation to the relevant facts and law (*Vavilov* at para 85).

[31] In my view, the RAD's framing of Falun Gong as a "knowledge-based faith" is justified in relation to the evidence. As authority for this distinction, the RAD cited Item 12.9 from the National Documentation Package ("NDP") for China, 28 June 2019, which states: "[t]he foundation of Falun Dafa consists of a body of fundamental knowledge essential for the task of undertaking proper cultivation towards higher stages of attainment." By distinguishing Falun Gong as a knowledge-based faith, I understand the RAD to expect that genuine practitioners will generally have a grasp on concepts that are fundamental to the religion. This conclusion is supported by the NDP, which affirms that knowledge of certain concepts of Falun Gong is integral to its practice.

[32] The above interpretation is supported by the RAD's subsequent conclusion that "there is an expectation that a genuine practitioner would make efforts to grow in their understanding of this faith system from the time they begin their practice of Falun Gong." In my view, this conclusion is justified in relation to the jurisprudence that, as discussed above, asserts the genuineness of a claimant's religious identity may be reasonably questioned if the claimant's knowledge of their religion is not commensurate with their claimed experience (*Qi* at para 18; *Gao* at para 29). What qualifies as commensurate must be assessed on a case-by-case basis, as it will depend on the claimant's circumstances and the features of the religion in question. In this case, the RAD was alive to that consideration: it noted the important role of religious knowledge

in Falun Gong, how that role informs the profile of a practitioner with the experience claimed by the Applicant, and how the Applicant does not meet that profile.

[33] Considering the above, I find it was reasonable for the RAD to determine that the Applicant is not a genuine Falun Gong practitioner based on his lack of religious knowledge.

B. *Did the RAD unreasonably dismiss the Applicant's sur place claim?*

[34] The Applicant submits that it was unreasonable for the RAD to reject his *sur place* claim, as it failed to give both his support letter and his photographs sufficient weight.

[35] I am not persuaded by the Applicant's argument that the RAD had a duty to contact the author of the support letter if it took issue with the document's lack of detail. As authority for this argument, the Applicant relies upon *Paxi v Canada (Citizenship and Immigration)*, 2016 FC 905 ("*Paxi*") at para 52, wherein Justice Russell found that the RPD erred in finding a support letter to be inauthentic without inquiring into the author's identity by using the contact information provided.

[36] In my view, *Paxi* is distinguishable from the case at hand because the RAD did not find that the Applicant's support letter "could have been written by anyone," or unreasonably rely on the fact that the letter was not notarized or accompanied by supporting identification documents (*Paxi* at paras 51-52). The RAD in this case concluded that the letter was not reliable and of little probative value, noting that the author neither identifies her role in the Falun Gong community nor describes how she was able to assess the genuineness of the Applicant's practice.

This conclusion is reasonable given the RAD's concerns (*Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at paras 17-18, 21). I therefore find that the principle in *Paxi* does not apply to the case at hand, as the RAD did not unreasonably doubt the authenticity of the letter.

[37] The Applicant asserts that the RAD unreasonably dismissed the support letter because it does not conform to its prior finding that the Applicant was not a genuine Falun Gong practitioner. As authority for this argument, the Applicant relies upon *Wu v Canada (Citizenship and Immigration)*, 2017 FC 420 (“*Wu*”) at para 9, wherein Justice Campbell held that it was unreasonable for the RAD to dismiss a letter that was similar to the one in question because it did not conform with the RAD's previous negative credibility findings.

[38] In my view, *Wu* is also distinguishable from the case at hand. Unlike in *Wu*, the RAD did not discount the support letter because it was not a sworn statement, and it relied on numerous findings in addition to the letter's incongruity with the Applicant's lack of religious knowledge, as described in the paragraph above.

[39] I agree with the Respondent that *Han v Canada (Citizenship and Immigration)*, 2019 FC 858 (“*Han*”), is analogous to the case at hand. The applicant in *Han* framed her Christian practice in Canada as a continuation of her Christian practice in China (at para 43). Because the RAD found that the applicant's Christian practice in China was not credible, Justice Walker held that the primary basis of her *sur place* claim “fell away” (*Han* at para 43). I find that the logic in *Han* applies to the case at hand: as the Applicant claims that his practice in Canada is a continuation of his practice in China, it was reasonable for the RAD to question the credibility of

the Applicant's practice in Canada because the Applicant's Falun Gong practice in China was found to be not credible.

[40] While the RAD accepted the Applicant's photographs as credible, it found this evidence was insufficient to establish that the Applicant is a person of interest to the Chinese authorities. The RAD held that the photographs only establish that the Applicant attended one protest and occasionally practiced Falun Gong in public. Given the facts established by the photographs, I find the RAD's determination that the Applicant does not face a forward-looking risk of persecution in China to be justified, transparent, and intelligible (*Vavilov* at para 99). In arguing to the contrary, the Applicant is asking this Court to reweigh the evidence before the RAD, which is not the purpose of judicial review (*Dhesi v Canada (Attorney General)*, 2018 FC 283 at para 24, citing *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 61).

V. Conclusion

[41] I find that the RAD's decision is reasonable. I therefore dismiss this application for judicial review.

[42] The parties have not identified a question of general importance for certification. I agree that none arises.

JUDGMENT IN IMM-7032-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified.

"Shirzad A."

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7032-19

STYLE OF CAUSE: LI YONG GAO v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE BETWEEN
OTTAWA AND TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 2, 2021

JUDGMENT AND REASONS: AHMED J.

DATED: MARCH 26, 2021

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