

Federal Court



Cour fédérale

Date: 20210617

Docket: IMM-6175-19

Citation: 2021 FC 625

Ottawa, Ontario, June 17, 2021

PRESENT: Madam Justice Pallotta

BETWEEN:

XIUYAN YU

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Xiuyan Yu, is a citizen of China who fears religious persecution and persecution arising from domestic violence by her husband. Ms. Yu seeks judicial review of a decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada, upholding the Refugee Protection Division's (RPD) determination that she is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the

Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]. The RPD and the RAD found that Ms. Yu's fear of persecution was not credible.

[2] Ms. Yu submits the RAD's decision is unreasonable. Ms. Yu argues the RAD erred in determining that she would not face domestic violence or religious persecution upon her return to China, and in overlooking the *sur place* aspect of risk should the Chinese authorities learn of her religious activities in Canada. Ms. Yu submits the RAD erred in finding that she filed a fraudulent summons indicating that she is wanted by the Public Security Bureau (PSB) for participating in an underground Christian church. She also argues the RAD erred by failing to consider her testimony in view of the *Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution* [Gender Guidelines].

[3] Ms. Yu has not established that the RAD's decision is unreasonable. Accordingly, this application is dismissed.

II. Issue and Standard of Review

[4] The issue on this application for judicial review is whether the RAD's decision is reasonable based on:

- (1) the RAD's finding that the summons is fraudulent;
- (2) the RAD's determination that Ms. Yu would not face a risk of persecution in China based on domestic violence or her religion;
- (3) a failure to consider the *Gender Guidelines*; and/or
- (4) a failure to consider a *sur place* claim.

[5] The guiding principles for reasonableness review are set out in the Supreme Court's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[6] Reasonableness is a deferential but robust form of review: *Vavilov* at paras 12-13, 75 and 85. The Court must determine whether the decision under review bears the hallmarks of reasonableness—justification, transparency and intelligibility: *Vavilov* at para 99. A reasonable decision is based on an internally coherent and rational chain of analysis and it is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85. The party challenging the decision bears the onus of demonstrating that it is unreasonable: *Vavilov* at para 100.

III. Analysis

A. *Did the RAD err in finding that the summons is fraudulent?*

[7] Ms. Yu alleges that her underground church was raided on September 14, 2014, and the PSB attended her home on September 24, 2014 with a summons for her arrest. Ms. Yu was not at home, and the PSB left the summons with her mother.

[8] The RAD found the summons to be fraudulent, on the basis that it does not conform to any of the sample summonses in the National Documentation Package (NDP) for China, and refers to a non-existent statutory provision. Also, Ms. Yu failed to mention the summons in her basis of claim (BOC) narrative, which she completed after entering Canada in January 2015.

[9] According to the RPD's reasons, Ms. Yu testified that she only found out about the summons after she made a claim for refugee protection in Canada. In response to further questioning on this point, Ms. Yu stated that a smuggler who helped her to leave China knew about the summons, but Ms. Yu and her mother did not. The RPD found it unlikely that only the smuggler would know about the summons. Ms. Yu challenged this finding on appeal, arguing that it was an improper implausibility finding because it is not inherently implausible that the smuggler learned about the summons first.

[10] The RAD noted that Ms. Yu did not dispute the RPD's finding that the summons was omitted from the BOC narrative, and agreed with the RPD that a scenario where the smuggler would know about the summons, while Ms. Yu and her mother did not, was unlikely.

[11] Ms. Yu submits the RAD's findings regarding the summons are unreasonable. She repeats that it is not implausible or impossible that the smuggler would have known about the summons even though she did not, and argues the RAD did not explain why the scenario was implausible. Ms. Yu entrusted her documents to the smuggler; she suggests it could have been an oversight that she did not see the summons when she was hastily preparing for her departure from China. Ms. Yu also submits the RAD's comparison of her summons to the sample summonses is unreasonable because the RAD did not explain how her summons differs from the samples, and the NDP indicates that regional variances in summonses across China are not *meant* to exist, not that regional variances do not exist. Furthermore, the NDP article dated back to 2013, and Ms. Yu contends there was no evidence to establish whether regional variances existed in 2014, when her summons was served. Finally, Ms. Yu suggests that the RAD referred

to the wrong law when it stated that Article 300 of the *Criminal Procedural Law of the People's Republic of China* does not exist. She submits that Article 300 does exist, in the *Criminal Law of the People's Republic of China*, and therefore the summons “invokes” an existing and relevant provision of a Chinese criminal law statute.

[12] I disagree. The RAD correctly pointed out that the burden to establish the authenticity of the summons rested with Ms. Yu. Contrary to Ms. Yu's submission, the RAD did explain how the summons differed from available samples in the NDP. Ms. Yu has not pointed to any evidence that the RAD overlooked or misconstrued about whether regional variances exist or whether the summons allegedly served on Ms. Yu conforms to a typical summons issued by the PSB in her region in 2014. The RAD was aware that there is an Article 300 in the *Criminal Law of the People's Republic of China*; the issue was that the summons in question refers to Article 300 of the *Criminal Procedural Law of the People's Republic of China*, which does not exist.

[13] The RAD did not find the summons to be fraudulent based on an implausibility finding regarding the smuggler's knowledge, but rather, based on all of the credibility concerns including: the summons does not conform to the sample summons in the record, it refers to the wrong statute, and Ms. Yu's BOC does not mention a summons. Ms. Yu testified that she and her mother had not known about the summons while the smuggler had, to explain her failure to mention the summons in the BOC narrative. In my view, the RAD reasonably found the scenario to be unlikely, on a balance of probabilities. Ms. Yu was required to do more than offer an explanation that was not impossible or inherently implausible, and it was open to the RAD to find that Ms. Yu's explanation was unlikely to be true.

[14] Ms. Yu has not established that the RAD committed a reviewable error in finding the summons is likely fraudulent.

B. *Did the RAD err in determining that Ms. Yu would not face a risk of persecution in China based on domestic violence or her religion?*

[15] Ms. Yu submits the RAD erred in determining she would not face a risk of domestic violence by her husband on the basis that he did not pursue her after their separation, he had not communicated with her for two years, and she has the support of his parents, who are raising the couple's child and assisting Ms. Yu with her refugee claim. Ms. Yu contends that her husband has not contacted her because she is in Canada, and his lack of contact would not be indicative of his behaviour upon her return. She argues the RAD failed to examine the motivation behind the in-laws' support, and whether they have the ability to control their son. According to Ms. Yu, the fact that her in-laws care for her child is not indicative of support, and could be indicative of manipulation or control. Also, she submits the RAD was overly focused on a "guarantee document" signed by the husband and the in-laws, promising that the husband would not abuse her further, since a similar document did not curtail his abuse in the past.

[16] Ms. Yu has not established that the RAD erred in determining she would not face a risk of domestic violence in China. Before the RAD, Ms. Yu did not dispute the RPD's findings regarding her husband's lack of motivation in pursuing her. The arguments about the in-laws' motives are speculative, and do not accord with Ms. Yu's testimony that she has a good relationship with them.

[17] Ms. Yu submits the RAD erred in determining she would not face a risk of religious persecution. Ms. Yu submits that religious persecution is grounded in a person's inability to freely practice their religion, even if they are not specifically targeted for arrest: *Fosu v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 1813 at para 5; *Zhou v Canada (Citizenship and Immigration)*, 2009 FC 1210 at para 29; *Ni v Canada (Citizenship and Immigration)*, 2010 FC 1239. She contends that religious constraints, such as the need to practice in hiding, limit the size of a congregation, and refrain from proselytizing, are indicators of persecution of Christians in China. Ms. Yu submits the RAD engaged in a selective review of the country condition documentation to find that, while some Christians face persecution in China, Ms. Yu is unlikely to face a serious possibility of persecution based on her specific religious profile and religious activities. She submits that the RAD ignored evidence of widespread persecution that is not restricted to particular Christian groups and movements. Furthermore, Ms. Yu contends the RAD erred by relying on outdated information in the NDP and ignoring information in more recent reports. For example, one recent report indicates that Chinese authorities have punished people for minor acts such as carrying a cross. Finally, Ms. Yu argues that the RAD's faulty credibility assessment "poisoned" its analysis of whether she faces a risk of religious persecution.

[18] I am not persuaded of a reviewable error in the RAD's analysis of whether Ms. Yu would face a serious possibility of religious persecution in China. The RAD found that Ms. Yu's church was not raided by the PSB and she was not wanted by the PSB due to her Christian faith. The RAD accepted that Ms. Yu is a Christian, and conducted a forward-looking assessment of risk.

[19] The RAD acknowledged that the country condition documentation provides mixed information on the persecution of Christians in China. Nonetheless, as the RAD noted, the NDP is considered to be relevant, reliable, and objective evidence, and the RAD reasonably focused on evidence that specifically discussed Christians living in Fujian, China—Ms. Yu’s home province. The RAD noted that Ms. Yu is not a church leader and her description of her church’s activities did not include public evangelism or open criticism of the government. The RAD reasonably concluded that Ms. Yu’s religious profile and activities did not fit the profile of individuals and churches that have drawn the attention of the Chinese government in recent years. I agree with the respondent that Ms. Yu failed to provide evidence to support her allegation that Christians are persecuted in Fujian province, including the city of Fuqing.

[20] The RAD reasonably found that Ms. Yu would not face a serious possibility of persecution if she were to return and practice her Christian religion.

C. *Did the RAD commit a reviewable error by failing to consider the Gender Guidelines?*

[21] Ms. Yu submits the RAD did not refer to or apply the *Gender Guidelines*, despite her allegations of domestic abuse. She argues the RAD did not consider the evidentiary difficulties of establishing her claim, or analyze whether the domestic abuse was attributable to a lack of state protection. As such, Ms. Yu submits that the RAD’s negative credibility findings are unreasonable.

[22] I am not persuaded of any error in this regard. The failure to specifically mention the *Gender Guidelines* does not mean that they were not considered: *Correa Juarez v Canada*

(*Citizenship and Immigration*), 2010 FC 890 at paras 17-18 [*Correa Juarez*]. On appeal to the RAD, Ms. Yu did not raise an issue regarding the RPD's application of the *Gender Guidelines*, and she has not explained how an alleged failure to consider the *Gender Guidelines* led to erroneous findings by the RAD. The *Gender Guidelines* indicate that a tribunal should be sensitive to a female applicant's difficulty in testifying in the context of a gender-based claim, but they do not serve to cure all deficiencies: *Correa Juarez* at para 17.

D. *Did the RAD commit a reviewable error by failing to consider a sur place claim?*

[23] Ms. Yu submits that the RAD acknowledged she is a practicing Christian, but failed to address the *sur place* aspect of her claim. Ms. Yu relies on *Hannoon v Canada (Citizenship and Immigration)*, 2012 FC 448 at paragraph 47 for the proposition that “even if an applicant does not explicitly raise a *sur place* claim, it must still be examined if it perceptibly emerges from the evidential record that activities likely to cause negative consequences on return took place in Canada.” She submits the RAD erred because it did not consider the possibility that Ms. Yu's activities in Canada would be brought to the attention of the Chinese authorities.

[24] The respondent submits the RAD did not have an obligation to consider risk based on a *sur place* claim because Ms. Yu had not argued or presented evidence that she would face a risk of persecution in China due to her activities in Canada. I agree. The RAD was not required to consider a *sur place* claim in the absence of evidence to support a risk of persecution in China based on Ms. Yu's activities in Canada. Ms. Yu did not present any evidence to establish the Chinese authorities would learn about her activities in Canada, or that their knowledge of those activities would put Ms. Yu at risk.

IV. **Conclusion**

[25] The RAD's decision is reasonable. This application for judicial review is dismissed.

[26] The parties did not propose a question for certification. There is no question to certify.

JUDGMENT in IMM-6175-19

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question to certify.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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