

Federal Court



Cour fédérale

Date: 20220414

Docket: IMM-6508-21

Citation: 2022 FC 537

Ottawa, Ontario, April 14, 2022

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

SHAOGUANG CHEN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of a decision of the Refugee Appeal Division [RAD] dated August 31, 2021 [the Decision], which confirmed the decision of the Refugee Protection Division [RPD] dated April 10, 2020 [the RPD Decision], finding that the Applicant is excluded from refugee protection by Article 1F(b) of the *United Nations Convention Relating to the Status of Refugees* [the Convention].

[2] As explained in greater detail below, this application is dismissed, because the Applicant's arguments have not established any reviewable error in the Decision.

II. **Background**

[3] The Applicant is a Chinese citizen who was formerly the general manager of a company responsible for the affairs and economic development of the village of Dong Jiao. He came to Canada from the United States [US] in July 2013, after his US visa was revoked, and was subsequently arrested by the Canada Border Services Agency [CBSA] in September 2017 for overstaying his Canadian visa. CBSA discovered that an INTERPOL red notice warrant for his arrest had been issued by the Chinese government, alleging that the Applicant had embezzled the equivalent of \$4 million CAD from the company he managed, by fabricating programs for the village that were never implemented. The Applicant claimed refugee status, claiming persecution for refusing to participate in a transaction with a corrupt Public Security Bureau [PSB] official and for being a Tibetan Buddhist, and alleges that the charges against him are false.

[4] The RPD refused the Applicant's refugee claim on the basis that he is excluded from protection by Article 1F(b) of the Convention and s 98 of the *Immigration and Refugee Protection Act*, SC 2001, c 27, finding that there are serious reasons to believe that the Applicant committed a serious non-political crime before coming to Canada. In the Decision that is the subject of this application for judicial review, the RAD affirmed the RPD Decision.

III. Issues and Standard of Review

[5] While the Applicant asserts a number of arguments in support of his position on this application, the principal issue raised by those arguments is whether it was reasonable for the RAD to find that there are serious reasons to believe that the Applicant committed a serious non-political crime. The Applicant also alludes briefly to a procedural fairness issue, which I will address at the end of these Reasons.

[6] As suggested by the above articulation of the principal issue in this matter, the applicable standard of review is reasonableness. In advancing his arguments, the Applicant emphasizes that reasonableness review involves assessing the justification, transparency and intelligibility of a decision (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 81) with a focus on the decision the administrative decision-maker actually made, including the justification offered for it, rather than the conclusion the Court itself would have reached in the decision-maker's place (see *Vavilov* at para 15).

[7] To the extent the Applicant is also raising a procedural fairness issue, it is reviewable on the standard of correctness.

IV. Analysis

A. *Credibility*

[8] The RPD identified several bases for its conclusion that the Applicant lacked credibility, and the RAD affirmed this analysis. These bases included the fact that the Applicant did not

make a refugee claim until after he was arrested by the CBSA after four years in Canada. The Applicant asserted that he was unaware of the possibility of making a refugee claim. The RAD did not agree with the Applicant's submission that it was speculation on the part of the RPD to question how he could lack this awareness after four years of consulting with immigration professionals on several visa renewals. The RAD reasoned that it was unlikely that none of those professionals would have canvassed this possibility with him.

[9] The Applicant argues that, in suggesting that he had dealt with a multiplicity of immigration professionals in Canada, the RAD misunderstood the evidence, which was that the Applicant had used the services of one immigration consultant in China to obtain his visitor visa and that consultant's branch office in Canada to obtain visitor extensions. He also argues that the RAD made an impermissible implausibility finding, by engaging in speculation that this immigration consultant was familiar with the concept of a refugee claim when there was no evidence to that effect.

[10] I find no reviewable error in the language employed by the RAD to refer to the number of immigration professionals consulted by the Applicant. The RAD used plural language, and it appears clear that, even if employed by the same consultancy, the Applicant was advised by more than one individual.

[11] Nor do I find the RAD to have erred in analyzing the Applicant's delay on the premise that these professionals would be familiar with the concept of a refugee claim. The RAD is entitled to make credibility findings based on implausibility, provided they are rational, sensitive

to cultural differences, and clearly expressed (see *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 26). The RAD's analysis is clear and, as the Respondent submits, it is not irrational to expect that immigration consultants will be familiar with the concept of a refugee claim.

[12] As additional bases for impugning the Applicant's credibility, the RPD referred to his initial failure to disclose to the CBSA that he feared returning to China to face criminal charges against him and that his US visa had been revoked because of these charges. The Applicant attempted to explain these failures as based on fear that the CBSA would remove him immediately because of the criminal charges. The RAD found that the RPD was correct in rejecting this explanation because, at that point in time, the Applicant was seeking Canada's protection and had access to counsel, who would have advised him that the fear of imminent removal was groundless.

[13] The Applicant submits that the RAD erred in this analysis. He notes the evidence that his telephone consultation with his advisor (an immigration consultant) was just a few minutes and argues that the RAD engaged in an unintelligible analysis and made an impermissible implausibility finding, because it could not know what had been discussed on that call.

[14] I again conclude that the RAD's analysis does not offend the jurisprudence surrounding implausibility findings. As the Respondent submits, the consultant with whom the Applicant spoke on that occasion is the one who assisted him with his refugee claim and therefore clearly understood that aspect of immigration law. Again, the RAD's analysis is clear and, given the

context of the Applicant's call with the consultant, it was not irrational for the RAD to expect that he had the benefit of advice on the prospects of removal.

[15] After explaining that it conducted an independent assessment of the evidence, the RAD stated that it discerned a clear pattern of the Applicant being evasive and untruthful and that it agreed with the RPD that his explanations were unsatisfactory. The Applicant argues that this finding lacks transparency, because the RAD did not explain the pattern it identified or why his explanations were unsatisfactory.

[16] I find no merit to this submission. The impugned statement by the RAD followed a number of paragraphs in which it analyzed inconsistencies in the Applicant's evidence and what it described as lies by the Applicant, including explaining why it had rejected the Applicant's explanations for the inconsistencies. This analysis culminated with the RAD observing that the Applicant's tenuous relationship with the truth was on display early in his first encounter with the CBSA, during which he twice claimed that his passport was lost before going to his bedroom safe to retrieve it for the officer. I find no lack of intelligibility in the RAD's analysis or conclusions.

[17] Finally, in relation to credibility, the Applicant submits that the RAD failed to address the issue of whether he was indeed a Tibetan Buddhist and the RPD's conclusion that his failure to establish the genuineness of his religious beliefs adversely affected his credibility. He also makes similar submissions surrounding the RPD impugning his credibility based on his failure to provide corroborative evidence from individuals in China supporting his allegation that the

charges against him were false. The Applicant argued before the RAD that the RPD erred in these aspects of its analysis, and he submits that the RAD failed to engage with these arguments.

[18] The Applicant is accurate in asserting that the RAD did not address his arguments surrounding the genuineness of his religious belief. However, in the context of the Applicant's arguments that he was being persecuted in part due to his religion, the RAD held that the determinative issue in the appeal was the sufficiency of evidence. The RAD agreed with the Minister's submission that a decision-maker may reject a factual assertion by the Applicant based on insufficient evidence, without the need to make a credibility finding, and found that the RPD was correct in its conclusion that there was no evidence on which one could infer that the charges against the Applicant were related to his religion.

[19] I therefore agree with the Respondent's submission that it was not necessary for the RAD to assess the genuineness of the Applicant's religious beliefs. I appreciate that the Applicant's failure to establish the genuineness of his religious beliefs was one of the findings that the RPD considered to have adversely affected his credibility. However, in the context of the numerous other findings underlying the credibility assessment, including those analyzed above and found to be reasonable, the RAD's lack of engagement with this one credibility finding does not undermine the reasonableness of the Decision.

[20] With respect to the lack of corroborative evidence, the Decision does demonstrate engagement with this component of the RPD's reasoning. The RAD observed that the Applicant was unable to maintain his credibility in the face of fair and effective questioning by the RPD at

the hearing, finding that the RPD was correct to conclude that inconsistencies, contradictions, and omissions in his evidence provided valid reasons to doubt the truthfulness of his allegations. In this context, and in the absence some form of corroboration for the allegations of religious persecution and/or false charges, the RAD held that the Applicant's testimony alone was not sufficient to establish his allegations. I find no reviewable error this reasoning.

B. Complexity of Economic Charges

[21] The RAD noted the RPD's comment that, if the Chinese authorities' impetus for persecuting the Applicant was his religion, one would expect the PSB to charge him directly with a religious or political offence rather than fabricating the complex economic charges detailed in the documentary evidence. The Applicant challenged this analysis on appeal, but the RAD agreed with the RPD that it was unlikely the authorities would have fabricated complex economic charges against up to 15 people rather than simply charging the Applicant for a religious offence.

[22] In arguing that the RAD's analysis is flawed and lacks justification, the Applicant submits that the RAD misinterpreted the country condition evidence. He notes the RAD's reference to the Applicant asserting that China has a corrupt judicial system and relying on the National Documentation Package [NDP] for China for the proposition that the easiest and most common way to persecute people is through economic crimes. The RAD cited multiple reports of authorities arresting and detaining religious leaders and rights advocates for lengthy periods, only to have their charges later dismissed for lack of evidence. The Applicant submits that the

RAD misinterpreted this evidence as referring only to religious leaders, when the evidence is that even religious adherents are arrested.

[23] I find no merit to this submission. The RAD's analysis did not turn on the NDP identifying the arrest of religious leaders in particular. Rather, the RAD reasoned that the fact that the NDP referred to charges for economic crimes being dismissed for lack of evidence was some indication that the system worked in the end to prevent unjust outcomes.

[24] Next, the Applicant asserts that the RAD's analysis is inconsistent with human rights principles and jurisprudence establishing that a person should not be detained for peacefully practising his religion and should not be denied the right to practice his religion freely and openly. I find nothing in the RAD's analysis inconsistent with such principles. The RAD simply concluded that it would make more sense for the PSB to charge the Applicant with an offence that would be easier to prove, such as his alleged actual religious practice, as opposed to fabricating an economic crime.

[25] The Applicant also submits that it was speculative for the RAD to frame the criminal charges against him as complex and that this characterization lacks transparency and an evidentiary foundation. However, in describing the charges as complex, the RAD referred to the fact that up to 15 people were charged in association with the alleged embezzlement scheme and stated its expectation that a phony economic charge would require the fabrication of a money trail among numerous individuals. I find this reasoning comprehensible and supported by the

evidence before the RAD as to the nature of the charges involving alleged embezzlement of \$4 million.

[26] Finally, the Applicant argues that, in concluding that it would be unlikely for the Chinese authorities to pursue such charges instead of an offence based on the Applicant's religious practice, the RAD made an impermissible plausibility finding. I find the RAD's analysis clearly expressed, rational, and consistent with the NDP evidence to which it refers, surrounding instances in which efforts to pursue religious persecution through charges for economic crimes have been ineffective when such charges were dismissed for lack of evidence.

C. Presumption of Truth

[27] The Applicant refers to the presumption of truth involved in the assessment of a refugee claimant's evidence (see, e.g., *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302, [1979] FCJ No 248 at para 5) and argues that the RAD failed to apply this presumption in connection with his professed religious beliefs.

[28] This argument raises no reviewable error on the part of the RAD. As previously noted, the RAD concluded that there was no evidence on which one could infer that the charges against the Applicant were related to his religion. This analysis turned on the sufficiency of evidence, not a credibility finding to which the presumption of truthfulness could be relevant.

D. Insufficient Evidence to Establish that Charges were Fabricated

[29] The Applicant submits that, in concluding that there was insufficient evidence to establish that the charges against him were fabricated, the RAD erred by making assumptions as to how the courts and law enforcement operate in China. He submits that these assumptions are inconsistent with NDP evidence that China lacks a fair policing and judicial system.

[30] In this component of the RAD's analysis, it states that, if the Applicant is innocent of the charges, the prosecutors would presumably have difficulty proving a money trail that does not exist, and the fabrication of evidence by the police ought to be a complete defence. I appreciate the Applicant's point that this conclusion is premised on the existence of properly operating justice systems. However, these statements by the RAD formed part of its explanation that it was not in a position to determine whether the charges were legitimate or fabricated. The RAD's determinative finding in this portion of its analysis was that, given the dearth of evidence to even infer that the charges might be false, the RAD had more than a mere suspicion that the Applicant was involved in the alleged embezzlement. The Applicant's argument does not undermine the reasonableness of this analysis.

[31] The Applicant also takes issue with the RAD's analysis that, if he was indeed innocent, he would not have fled the country a day after the police requested that he report for an interview. He argues that the RAD improperly relied on one sentence in a CBSA officer's declaration, to the effect that CBSA had information that the Applicant fled China the day after the police talked to him. The Applicant denied that the police ever approached him in China,

stating that he learned he was wanted by the police only after he had already left. In support of his position that the RAD erred in relying on this information in the officer's declaration, the Applicant also submits that neither the RPD nor the RAD raised this point with him, to give him an opportunity to respond, before the point appeared in the RAD's Decision. The Applicant argues that it was both unreasonable and unfair for the RAD to base its analysis on this information.

[32] Whether characterized as a point relevant to the reasonableness of the RAD's analysis, or an issue of procedural fairness surrounding the Decision, I agree with the Respondent's submission that this point is not sufficiently material to the Decision to represent a reviewable error. Based on the Applicant's lack of credibility and the absence of any other evidence supporting his allegations, the RAD concluded that there was insufficient evidence to establish that the charges against him were fabricated.

V. **Conclusion**

[33] Having considered the Applicant's arguments, I find no reviewable error in the Decision and must dismiss this application for judicial review. Neither party proposes any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-6508-21

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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