Federal Court  Cour fédérale

Date: 20220531

Docket: IMM-3975-21

Citation: 2022 FC 784

Ottawa, Ontario, May 31, 2022

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

CHENGKUN ZHANG

Applicant

And

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Zhang, sought asylum in Canada, claiming that he was at risk of persecution from the Chinese authorities because of his religious beliefs. Mr. Zhang was found ineligible to make a refugee claim, which meant he could not have his claim heard orally before an adjudicator at the Immigration and Refugee Board [IRB]. Instead, Mr. Zhang's claim that he was at risk of persecution was decided by an officer at Immigration, Refugees and Citizenship

Canada [IRCC] ("Officer") through a written process — an application for a Pre-Removal Risk Assessment (commonly known as a PRRA application).

[2] Mr. Zhang's PRRA was refused in June 2020. He challenges the refusal in this judicial review on two grounds. First, he argues that the decision is not transparent or justified because the Officer failed to grapple with the substance of his religious persecution claim, and instead only focused on the lack of corroborative documents without an explanation as to their necessity. Second, based on the Officer's treatment of Mr. Zhang's declaration in support of his claim, he argues that the Officer made veiled credibility findings, couched in the language of insufficiency of evidence, and therefore an oral hearing should have been held so that he could address credibility concerns.

[3] The Officer's minimal reasons do not allow me to assess whether they made a veiled credibility finding or whether it was really an issue of insufficient evidence, as the Respondent argued. Ultimately, I find the decision unreasonable because the Officer failed to conduct an analysis of the central issues before them. Particularly in light of the serious interests at stake — Mr. Zhang's claim that he faces a risk of persecution — the Officer's minimal analysis falls well short of "the requisite degree of justification, intelligibility and transparency" required (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 100, 133 [*Vavilov*]).

[4] Based on the reasons set out below, the judicial review is granted.

II. Background Facts

[5] Mr. Zhang is a citizen of China. He is a convert to Christianity. Mr. Zhang described how his mother introduced him to Christianity after he had gone through a particularly challenging period in his life. In May 2018, Mr. Zhang began attending a weekly prayer group with his mother at a "house church." Through a member of the house church he attended, Mr. Zhang learned of an opportunity to work as a crew member on a ship. Mr. Zhang began this work as a crew member in December 2018.

[6] A few months later, while aboard the ship, Mr. Zhang received a message from his father, who advised him that his mother had been arrested on August 18, 2019 and that he should not return to China. Following this message, Mr. Zhang decided to disembark from the ship when it docked in Canada.

[7] Mr. Zhang entered Canada on August 23, 2019 at the Fraser Surrey Docks in Surrey, BC. While the ship was berthed, Mr. Zhang disembarked and did not return to the ship as expected and required on August 26, 2019.

[8] On August 29, 2019, an officer with Canada Border Services Agency [CBSA] prepared a report under s 44(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], which indicated their view that Mr. Zhang was inadmissible to Canada because after ceasing to be a "member of a crew", he failed to leave Canada within 72 hours (ss 3(1)(b) and 184(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-27 [*IRPR*]). On August 29, 2019,

based on the s 44(1) report, an exclusion order was issued against Mr. Zhang. Mr. Zhang was not aware that the exclusion order had been made against him.

[9] Approximately two weeks after disembarking from the ship, on September 11, 2019, Mr. Zhang attempted to make a refugee claim by attending an inland IRCC office. He was arrested and detained. Two days later, on September 13, 2019, while he remained detained, Mr. Zhang was advised by a CBSA officer that he was ineligible to make a refugee claim because an exclusion order had already been issued against him. Instead of the refugee hearing process before the IRB, Mr. Zhang was offered to file a PRRA, under s 112(1) of *IRPA* and s 160 of *IRPR*, in order for his risk to be assessed.

[10] Mr. Zhang was released from detention on September 16, 2019. He filed his PRRA forms, including his declaration about the events prompting him to seek protection in Canada, on September 27, 2019. On October 15, 2019, further submissions and evidence were filed.

[11] On June 27, 2020, Mr. Zhang's PRRA was refused.

III. Issues and Standard of Review

[12] The Supreme Court of Canada in *Vavilov* confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits.

[13] The parties did not agree on whether the reasonableness standard applied to the issue of whether the Officer should have held an oral hearing to address a credibility issue. The Applicant

argued it was a procedural fairness issue and therefore the correctness standard should apply; the Respondent argued the Court would be reviewing the Officer's application of statutory factors to the facts and therefore the reasonableness standard ought to apply. There is also division in this Court as to the appropriate standard of review to apply in these circumstances. Madam Justice Go recently summarized this division in *Onyekweli-Ugeh v Canada (Minister of Citizenship and Immigration)*, 2021 FC 1138 at paragraphs 17-18.

[14] Ultimately, I have found it unnecessary to address this issue because, as noted above, my determination does not rest on the Officer's decision to not hold a hearing. In my view, the determinative issue is the Officer's failure to justify their decision with transparent and intelligible reasons.

IV. Analysis

A. *PRRA procedure*

[15] Canadian authorities' first and only evaluation of Mr. Zhang's religious persecution claim has been through the PRRA process. The PRRA is generally, as it was in Mr. Zhang's case, a written process. The statutory deadline to have the PRRA forms completed is 15 days after having being offered to make the application (s 162 of *IRPR*), with further submissions and evidence required to be filed within another 15 days.

[16] Section 113(b) of *IRPA* provides that PRRA officers may hold a hearing and section 167 of *IRPR* sets out the circumstances where a hearing is required to be held, codifying common

law procedural fairness guarantees (*Ahmed v Canada (Minister of Citizenship and Immigration)*, 2018 FC 1207 at para 27). Essentially, an oral hearing is required where "there is a credibility issue regarding evidence that is central to the decision and which, if accepted, would justify allowing the application" (*Huang v Canada (Minister of Citizenship and Immigration)*, 2019 FC 1439 at para 41 [*Huang*]). In other words, applicants must be afforded the right to be able to respond to credibility concerns that are determinative of their claim.

[17] The principle of *non-refoulement*, the prohibition on returning refugees to countries where they are at risk of human rights violations, is engaged in the PRRA determination process (*Németh v Canada (Minister of Justice)*, 2010 SCC 56 at paras 1, 19; *Atawnah v Canada (Minister of Public Safety and Emergency Preparedness)*, 2015 FC 774 para 48). These critical rights and interests at the core of a PRRA decision mean that there is a heightened obligation to provide applicants both with a procedurally fair process (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 22-23) and responsive reasons that reflect the serious issues at stake (*Vavilov* at para 133).

B. *Failure to grapple with central issues in claim*

[18] The core of the Officer's analysis of Mr. Zhang's claim focused on the possible corroborative documents he may have been able to produce. There is no explanation for why particular documents were required in relation to the type of risk being alleged. Overall, the Officer's analysis leaves many questions unanswered and is demonstrative of an approach that fails to grapple with the critical issues arising from the claim.

[19] The Officer began their review with an evaluation of the objective country condition documentation provided. This summary included references to the Chinese authorities' targeting of those who are members of house churches and demanding, on the threat of reprisals, that they renounce their faith:

> The [Chinese Communist Party] also brought in new measures effective February 1, 2020 that aim to "…halt the activities of house churches, dissident Catholic communities, and other unregistered religious bodes." Country reporting also indicates that government officials and education authorities are compelling members of house churches and other Christians to sign documents renouncing their Christian faith and church membership, using the threat of withdrawing employment and educational opportunities, as well as social welfare benefits from worshippers.

[20] These findings about the Chinese government's treatment of house church members were not assessed in relation to Mr. Zhang's declaration and risk claim. The Officer did not analyze how Mr. Zhang's religious profile, as a convert to Christianity who had participated in house churches, ought to be evaluated as against this objective country condition evidence.

[21] Instead, the Officer made a general finding that Mr. Zhang had not provided "any evidence outside of his statement that he is connected to this persecution." This blanket statement does not allow a reviewing court to understand on what basis the Officer was requiring further evidence. In other words, the Officer did not explain their reasoning as to what aspects of Mr. Zhang's declaration were not sufficient to accept without further corroborative evidence. This Court has held that a decision-maker must explain the reason for requiring corroboration of an applicant's evidence (*Senadheerage v Canada (Minister of Citizenship and Immigration)*, 2020 FC 968 at para 34; *Contreras Luevano v Canada (Minister of Citizenship and Immigration)*, 2021 FC 1467 at para 20; *Nadarajah v Canada (Minister of Citizenship and*

Immigration), 2022 FC 171 at para 18; *Magonza v Canada (Minister of Citizenship and Immigration)*, 2019 FC 14 at paras 34-35).

[22] The Officer listed five categories of documents Mr. Zhang failed to provide: i) evidence that the Chinese authorities knew that he attended the house churches in 2018; ii) evidence that the Chinese authorities wanted to arrest him for attending the house churches; iii) a record of arrest for his mother; iv) evidence from his parents about these events; and v) proof of the phone call with his father.

[23] Mr. Zhang did not have direct knowledge of certain events in his declaration — most notably, the arrest of his mother of which his father informed him. However, there were other relevant parts of his claim, including his conversion to Christianity and participation in house churches, that were in Mr. Zhang's direct knowledge and about which he provided details in his declaration.

[24] The Officer's evaluation leads to a number of questions that go to the core issues raised by the claim: Was the Officer satisfied that Mr. Zhang converted to Christianity? Was the Officer satisfied that Mr. Zhang practiced his faith by attending house churches? If the Officer was not satisfied, why not? On what basis were his statements found not to be sufficient, given that the presumption of truthfulness applies to his detailed declaration (*Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302)? Was the Officer's statement that there was no evidence the Chinese authorities knew he attended house churches in 2018, nor that they wanted to arrest him indicative of the Officer's view that even if they were satisfied Mr. Zhang had been

a member of a house church, there needed to be further evidence that the authorities knew of this activity and were seeking him out? If that was the Officer's reasoning, though it is unclear that it was, how would this sort of analysis be in line with the general principle in religious persecution cases that claimants should not be expected to hide practicing their faith? (*Akcay v Canada (Minister of Citizenship and Immigration)*, 2020 FC 950 at para 31; *Zhang v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1198 at paras 19-20).

[25] The challenge in determining whether an oral hearing was required in these circumstances is that the Officer's limited analysis does not allow the reviewing court to even determine what "evidence, if accepted, would justify allowing the application for protection", a factor to consider under s 167 of *IRPR*. Despite Mr. Zhang's request for an oral hearing, the Officer did not engage in an assessment of the factors in s 167. This failure to address a request for an oral hearing has been found to be unreasonable by this Court (*Montesinos Hidalgo v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1334 at paras 21-22; *Huang* at para 43).

[26] Ultimately, the overriding problem is that the Officer did not grapple with the key issues arising from the claim. The decision is unreasonable because it lacks internally coherent reasoning. It does not allow us to "understand the decision maker's reasoning on a critical point" and leaves unanswered questions that are central to the persecution claim (*Vavilov* at para 103). Given the serious consequences of this decision, there is a heightened obligation on an officer to provide responsive reasons that justify their decision to an applicant. Setting out what other

documents an applicant may have been able to produce is not a substitute for an analysis of the claim itself.

[27] The application for judicial review is granted. The parties did not raise a question for certification and I agree that none arises.

JUDGMENT IN IMM-3975-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted;

2. No question of general importance is certified.

"Lobat Sadrehashemi"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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