Federal Court  Cour fédérale

Date: 20220602

Docket: IMM-1734-20

Citation: 2022 FC 807

Ottawa, Ontario, June 2, 2022

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

HAIAN TAN
RONGXIAN SITU

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The male Applicant in this judicial review, Haian Tan ("Mr. Tan") and his wife, Rongxian Situ, sought refugee protection in Canada because of their fear that the Chinese authorities would target them due to Mr. Tan's practice of Falun Gong. The Refugee Protection Division [RPD] rejected their refugee claim because it did not find the claim to be credible. The

Applicants appealed this determination to the Refugee Appeal Division [RAD]. The RAD rejected the appeal, affirming many of the RPD's determinations on credibility. The Applicants challenge the RAD's refusal of their appeal in this judicial review.

[2] The only argument advanced by the Applicants on judicial review is that the RAD failed to conduct an independent assessment. I have reviewed the RAD's decision and do not find that there is support for this argument. For the reasons set out below, I dismiss the application for judicial review.

II. Background Facts

[3] The Applicants are married and both citizens of China. They have a daughter, who was born in Canada, and therefore not part of this refugee claim.

[4] Mr. Tan asserted that he was introduced to Falun Gong through a friend in September 2017 and then began practicing secretly every weekday evening. Approximately a month later, this friend was arrested. Mr. Tan then went into hiding. A week after he went into hiding, Mr. Tan alleged that the Public Security Bureau ("PSB") visited his parents' home and inquired as to his whereabouts. The PSB came again and confiscated Mr. Tan's Falun Gong materials found in his parents' home. Mr. Tan alleged that they came a third time and left a warrant for his arrest with his parents.

[5] The Applicants left China and came to Canada as visitors on December 15, 2017. In March 2018, they made a claim for refugee protection. Mr. Tan continued to practice Falun Gong in Canada.

[6] Following a two-day hearing, the RPD rejected the claim on September 18, 2019. The RPD found that Mr. Tan was not a genuine practitioner of Falun Gong. The RPD gave little weight to the corroborative documents provided by the Applicants because it found that the documents were copies and/or there were discrepancies with what was to be expected as set out in the objective country condition documentation. The RPD also found that a number of the events as described by the Applicants to be implausible, including being able to leave China on their passports in spite of the Golden Shield Project, the Chinese government's surveillance network. The RPD also found that Mr. Tan provided vague testimony about his Falun Gong practice.

[7] The Applicants challenged the decision, arguing that a number of the credibility findings could not stand up to scrutiny and the decision should be overturned. The RAD dismissed the appeal on February 4, 2020.

III. Issue and Standard of Review

[8] The only issue raised by the Applicants is whether the RAD conducted an independent assessment. Both parties agree that the standard of review to be applied is reasonableness. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] confirmed that reasonableness is the presumptive standard of review when

reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption.

IV. Analysis

[9] The RAD is required to do an independent assessment of the record, determine whether the RPD erred, and come to its own determination of the claim (*Canada (Minister of Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 103). The Applicants argue that the RAD failed to do this independent assessment and instead only confirmed the findings of the RPD. I do not find that the Applicants' argument has any merit. The Applicants cannot point to any example where the RAD did not engage in an independent assessment. They have pointed the Court to parts of the RAD's decision that they disagree with and which they argue were unreasonable findings but they have not shown that the RAD failed to conduct an independent assessment, which is the sole basis for their judicial review.

[10] Applicants' counsel argued that if it is enough for the RAD to state the RPD's determination on a point and then proceed to state that they agreed with its reasoning, it would then be sufficient for a RAD Member to dispose of an appeal in a few sentences by simply stating that they had reviewed the record, done an independent assessment, and agreed with the RPD. I agree that this sort of analysis would be unreasonable and would fall into the problem identified by Justice Diner in *Jeyaseelan v Canada (Minister of Citizenship and Immigration)*, 2017 FC 278: "An overly obsequious support for and reinforcement of all RPD findings can bring into question the independence of the RAD's analysis" (at para 19).

[11] I do not accept, however, that this is the analysis the RAD conducted in this case. I find that the RAD responded to each of the errors identified by the Applicants, did its own review of the record, and in some instances agreed with the analysis that had been undertaken by the RPD. There were also a number of arguments the RAD determined were unnecessary for it to address because even if it were to have found the RPD erred, it would not be sufficient to overcome the negative credibility findings it had already made.

[12] The Applicants seem to be arguing that the RPD's decision is so outrageous that another decision-maker, having done an independent assessment, could not possibly accept its reasoning, and therefore the RAD could not have done an independent assessment. I do not accept this reasoning. It could be that both decision-makers are making unreasonable determinations, but this does not, in and of itself, lead to the conclusion that the second decision-maker did not come to these unreasonable determinations on their own through an independent assessment.

[13] I accept that the Applicants do not agree with the credibility findings made by the RPD or the RAD. It was open to the Applicants to have challenged the actual findings made by the RAD that mirror closely those that were made by the RPD. The Applicants have not done this on judicial review. The Supreme Court of Canada in *Vavilov* explained that the "burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov* at para 100). The Applicants' counsel argued orally that, in effect, when they say that the RAD failed to do an independent assessment, this is really an argument about the reasonableness of the RAD's findings. I cannot agree with this submission. The Court cannot now, at this stage, go into the

record and determine the reasonableness of each of the credibility findings made by the RAD when these arguments were not before it. This is not what was argued on judicial review.

[14] The application for judicial review is dismissed. No question for certification was raised by either party and I agree that none arises.

JUDGMENT IN IMM-1734-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. No question of general importance is certified.

"Lobat Sadrehashemi"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1734-20
STYLE OF CAUSE:	HAIAN TAN ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	MAY 31, 2022
JUDGMENT AND REASONS:	SADREHASHEMI J.
DATED:	JUNE 2, 2022

APPEARANCES:

Leonard H. Borenstein	FOR THE APPLICANTS
Idorenyin Udoh-Orok	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Leonard H. Borenstein Barrister & Solicitor Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT