

Federal Court



Cour fédérale

**Date: 20220624**

**Docket: IMM-4479-20**

**Citation: 2022 FC 955**

**Ottawa, Ontario, June 24, 2022**

**PRESENT: The Honourable Madam Justice Elliott**

**BETWEEN:**

**DEPENG REN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] This is a judicial review of a decision made on August 27, 2020 by the Refugee Appeal Division (RAD) confirming an earlier decision made by the Refugee Protection Division finding the Applicant is neither a Convention refugee nor a person in need of protection as a Falun Gong practitioner (the Decision).

[2] For the reasons that follow, I find the RAD did not provide internally consistent and rational reasons in addressing whether or not a chuanpiao (summons) was authentic. The error is compounded when the RAD refers to the same problematic reasoning in support of finding the Applicant's *sur place* claim was not made out.

## II. **Background Facts**

[3] The Applicant was born in December, 1994 in China. He was unable to attend high school as a result of having a sleeping disorder that affected his study and daily life. This also affected his ability to find employment which worsened his sleeping disorder.

[4] In January 2016, a friend told the Applicant that they had suffered from depression but were able to become healthy through the practice of Falun Gong. The Applicant joined a group practice with 13 other practitioners in their homes. They practised 5 exercises and studied Master Li's book Zhuan Falun.

[5] In mid-November, 2016 the Public Security Bureau (PSB) raided the house where the Applicant and others were practising but they were able to escape thanks to a lookout.

[6] The Applicant hid at his aunt's house. His parents called to say the PSB had been looking for him and had left a chuanpiao for him. They also told the aunt that another practitioner was in hiding while two others had been arrested.

[7] The Applicant left China on July 12, 2017 with the assistance of a smuggler. His Basis of Claim Form (BOC) was signed October 10, 2017 and received on November 28, 2017 by the Immigration and Refugee Board.

### III. Analysis of the Decision

[8] The key issue raised by the Applicant in this application is the inconsistent treatment by the RAD of the chuanpiao tendered by the Applicant to support the claim that he is being pursued by the PSB for having practised Falun Gong.

[9] The RAD's analysis of the chuanpiao began by finding at paragraph 37 that while it was translated as a "summons or subpoena" it was not consistent with the documentary evidence, and the Chinese format showed it was a court summons. This finding is reinforced at paragraph 38 when the RAD concludes that "it is more likely than not that the document provided is actually a court summons." The RAD also notes that while it requires a party to proceed to court, most witnesses ignore such court orders as there is no penalty for ignoring such an order.

[10] The RAD concluded at paragraph 40 that the summons was not an authentic summons from the PSB but was a court order that is easily obtained on the Internet and that presents no penalty for noncompliance.

[11] The inconsistency in the reasons provided by the RAD occurs at paragraph 48 when it is considering the Applicant's *sur place* claim. After summarizing that the Applicant did not demonstrate knowledge of the principles and exercises in the Zhuan Falun, the RAD stated that

“[t]he summons is not likely to be authentic and even if it was a genuine court summons, they are usually ignored without consequences.”

[12] This statement is in direct conflict with the finding made at paragraph 38 of the Decision that “it is more likely than not that the document provided is actually a court summons.”

[13] It is acknowledged that the RAD has the expertise to assess the authenticity of corroborating documents and assign weight accordingly. It is not for the Court to reweigh the evidence and I decline to engage in any such exercise.

[14] The reasons contain a fatal flaw in the RAD’s overarching logic. Both findings cannot be right. Either the summons is actually a court summons or, the summons is not likely to be authentic.

[15] These conclusions concerning the authenticity of the court summons cannot co-exist. The RAD’s reasoning is not internally coherent nor is there a rational chain of analysis permitting such opposite conclusions to be drawn by the RAD about the same key document. These opposing conclusions render the Decision unintelligible, unjustified and not at all transparent. The Decision is therefore unreasonable: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85.

[16] As I have concluded that the Decision is unreasonable it must be set aside. It is therefore not necessary to review any of the other arguments put forward by the parties.

[17] The application is granted and the Decision is set aside. This matter is to be returned to another member of the RAD for redetermination.

[18] There is no serious question of general importance for certification on these facts.

**JUDGMENT in IMM-4479-20**

**THIS COURT'S JUDGMENT is that:**

1. The application is granted and the Decision is set aside. This matter is to be returned to another member of the RAD for redetermination.
2. There is no serious question of general importance for certification on these facts.

"E. Susan Elliott"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4479-20

**STYLE OF CAUSE:** DEPENG REN v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** HELD BY WAY OF VIDEO CONFERENCE

**DATE OF HEARING:** SEPTEMBER 9, 2021

**JUDGMENT AND REASONS:** ELLIOTT J.

**DATED:** JUNE 24, 2022

**APPEARANCES:**

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