

Federal Court



Cour fédérale

Date: 20220927

Docket: IMM-5793-21

Citation: 2022 FC 1339

Toronto, Ontario, September 27, 2022

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

SUN, LIQING

Applicant

And

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a July 30, 2021 decision [Decision] of the Refugee Appeal Division [RAD], confirming the Refugee Protection Division's [RPD] decision that the Applicant was not a Convention refugee or a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The determinative issue was the credibility of the Applicant's evidence relating to her alleged practice of the Falun Gong [FG] spiritual movement.

[2] For the reasons that follow, I find that the Decision was reasonable and that the application should be dismissed.

I. Background

[3] The Applicant, Liqing Sun, is a citizen of China. She alleges that she was introduced to FG by a friend during a visit to Canada and began practicing FG in June 2018. She applied for refugee protection, claiming that if she returned to China she would be at risk and would not be able to practice FG freely.

[4] On March 10, 2021, the RPD refused the Applicant's claim [RPD Decision]. The RPD drew negative credibility inferences from the Applicant's description of the FG demonstrations she alleged attending and her responses to questions about FG writings and concepts, which they found vague, and sometimes incorrect. Based on these responses, the RPD was of the view that the Applicant was not a genuine FG practitioner. The RPD further concluded that there was insufficient evidence to find, on a balance of probabilities, that the Applicant's participation of FG in public spaces in Canada was brought to the attention of the Chinese authorities so as to satisfy a *sur place* claim.

[5] The Applicant appealed the RPD Decision to the RAD. In dismissing the Applicant's appeal, the RAD drew negative credibility inferences from the Applicant's "inability to remember what kind of events she attended and what they were commemorating" and her imprecise and vague understanding of the *Zhuan Falun*, which provides the central teachings of FG, and of FG principles and exercises. The RAD found the Applicant was not a genuine FG

practitioner given her inability to testify with confidence or details about her own practice or the FG philosophy. The RAD further concluded that there was insufficient evidence to establish a *sur place* claim.

II. Issues and Standard of Review

[6] The sole issue on this application is whether the Decision was reasonable.

[7] A decision of the RAD is subject to reasonableness review. None of the situations that would rebut the presumption of the reasonableness standard of review for administrative decisions are present: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 16-17.

[8] In conducting a reasonableness review, the Court must determine whether the decision is “based on an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker”: *Vavilov* at paras 85-86; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at paras 2, 31. A reasonable decision, when read as a whole and taking into account the administrative setting, bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 91-95, 99-100.

III. Analysis

[9] The Applicant argues that the RAD unreasonably drew negative inferences from her testimony to support its adverse credibility finding. She refers specifically to the negative inferences drawn from her answers relating to attendance at FG parades and demonstrations, the

“Third Talk” (one of the nine parts of the *Zhuan Falun* text), “dual cultivation and longevity” (another principle discussed in *Zhuan Falun*), the third exercise of the FG, and her identity as a FG practitioner. She also argues that the RAD misapprehended the law when assessing her *sur place* claim.

[10] The Respondent asserts that the Applicant’s arguments are nothing more than an attempt to have this Court reweigh the evidence. As set out below, I agree that the Applicant has not established that the RAD made a reviewable error.

[11] In the Decision, the RAD finds that the Applicant’s testimony regarding FG parades was vague. The Applicant argues that the RPD should have asked for clarification if it considered the answers given to be insufficient. However, I agree with the Respondent, there was no obligation on the RPD to highlight the deficiencies with the Applicant’s responses, particularly in view of the variety of questions asked.

[12] The Applicant was asked several different types of questions relating to the what, when, and why, of her attendance at the FG events, but beyond stating that one FG parade occurred in July, 2019, the Applicant was unable to identify or describe with any clarity the other events attended or how many there were. It was not unreasonable for the RAD to find the responses given vague. Nor was it unreasonable to infer “based on common sense and rationality” that for genuine attendees, such large events would have been significant, important and memorable such that the Applicant’s inability to provide more detailed testimony of what, when, and why she attended the events undermined her credibility. In my view, the RAD’s analysis on this testimony was rational and reasonable.

[13] The Applicant notes that the RAD recognized an error in the RPD's analysis relating to her testimony on the Third Talk. Specifically, the RAD recognized the RPD's finding that the Applicant was incorrect in failing to identify the list of topics in the Third Talk was improper when it did not ask the Applicant about the list of topics, but only asked the Applicant to tell the panel "something" about the Third Talk instead. However, she asserts that the RAD nonetheless drew a negative inference from the answer given to the question, which was unreasonable. I do not find this argument persuasive as it overstates the comments made by the RAD.

[14] The RAD stated only that the Applicant's answer was generic and vague, and did not help to establish her identity as a genuine FG practitioner. In my view, it was open for the RAD to view the evidence in this manner. I do not consider this statement or the RAD's recognition of the RPD's error to be pivotal to the RAD's credibility finding.

[15] The Applicant takes issue with the RAD's critique of her comments regarding "dual cultivation and longevity" as discussed in *Zhuan Falun*. She asserts that the RAD was looking for a single "correct" answer, which was unrealistic and unreasonable.

[16] The RAD notes that the RPD asked the Applicant to tell it "anything" about the concepts of dual cultivation and longevity. However, the answer provided was non-responsive and circular: the Applicant stated that performing the five exercises cultivates longevity and reading the *Zhuan Falun* cultivates mind and nature. The Applicant did not refer to the principle of dual cultivation and longevity from the *Zhuan Falun*, although it was articulated in *Zhuan Falun*

several times. I see no reviewable error in the RAD's chain of analysis relating to this part of the testimony.

[17] Similarly, I am not persuaded that the RAD erred in its analysis of the Applicant's responses to questions on the third exercise. The RAD found that the Applicant's response was not correct as it confused a result of the exercise (to purify) with its stated purpose, which was specifically described as to mix and merge the universe's energy with the energy inside the body. The RAD found the Applicant "frequently resorted to vaguely using the term "purify" when asked specific questions regarding FG". It also noted that the answer was set out in the National Documentation Package and the *Zhuan Falun*, which the Applicant stated that she read 4-5 times a week. In view of the Applicant's asserted exposure and familiarity with the *Zhuan Falun*, I do not consider these comments to be unreasonable or the approach taken to be overly critical.

[18] As noted in *Qi v Canada (Citizenship and Immigration)*, 2020 FC 400 at paragraphs 17-20, FG is a philosophy that requires sufficient knowledge to be a *bona fide* practitioner:

[17] The Applicants complain that the RAD unreasonably found that Mr. Qi is not a genuine practitioner of Falun Gong. However, the RAD noted that Falun Gong is not a religion, but a philosophy. Unlike religions, the practice of Falun Gong requires "sufficient knowledge to be a bona fide practitioner, and does not rely on pure faith the way religions do."

[18] The jurisprudence of this Court suggests there is a "very low standard on refugee claimants to demonstrate religious knowledge as a requirement for proving religious identity", including with respect to Falun Gong (*Lin v Canada (Minister of Citizenship & Immigration)*, 2012 FC 288 at para 59; *Lin v Canada (Citizenship and Immigration)*, 2018 FC 1057 at paras 19-20). Nevertheless, the RPD is entitled to probe whether a claimant's story is credible by asking questions about the basic tenets of his or

her faith. The RPD may choose to disbelieve a claimant whose knowledge does not correspond to the duration and depth of his or her religious activities.

[19] The RPD may not assess the genuineness of a claimant's religious beliefs by engaging in "what *amounts* to a trivia quiz" (*Jia v Canada (Minister of Citizenship and Immigration)*, 2016 FC 33 at para 17, citing *Wu v Canada (Citizenship and Immigration)*, 2009 FC 288 at paras 59-61). The questioning and resulting analysis must focus on the genuineness of the beliefs, not on whether they are theologically correct (*Gao v Canada (Citizenship and Immigration)*, 2015 FC 1139 at para 26).

[20] The RAD accepted that Ms. Qi had "some knowledge of Falun Gong", but agreed with the RPD that the knowledge she demonstrated was " cursory at best". She was not able to explain basic Falun Gong principles, and her responses to questions were "vague, and lacking both in detail and depth." Given its other adverse credibility findings, it was open to the RAD to conclude that Ms. Qi was not a genuine practitioner of Falun Gong.

[19] It was reasonable for the RPD to test the Applicant's knowledge of FG and for the RAD to note apparent discrepancies and inconsistencies in that testimony with key portions of the *Zhuan Falun*.

[20] The Applicant asserts that the RAD unreasonably drew a negative inference from her assertion that she practices FG to maintain her health by cherry-picking excerpts from the *Zhuan Falun* that were inconsistent with that objective. The Applicant submits that there were an equal number of excerpts from *Zhuan Falun* related to the health effects of FG that supported the Applicant's assertion. I do not find this further argument persuasive.

[21] As noted by the RAD, this question was not intended to test the Applicant's knowledge of the *Zhuan Falun*. Rather, it was asked as a foundational question. The RAD's comments highlight that the Applicant's stated purpose for practicing FG does not accord with the primary

objectives for the philosophy set out in the country condition evidence and the *Zhuan Falun*.

The passages cited by the Applicant, which go to some of the beneficial effects of FG, rather than the foundational objectives of the philosophy, do not undermine the RAD's reasoning. The objectives are consistently stated as not being for healing illness. As noted by the RAD:

... the RPD specifically asked the Appellant "why is the practice of Falun Gong important to you," which is not a knowledge-based question. The Appellant responded that her health issues were the only reason she practised FG. Based on my independent review of the country condition evidence, I find the Appellant's preoccupation with health undermines that she is a genuine practitioner of FG. Specifically, the country condition evidence states "Falun Dafa's goal of 'genuinely guiding people to higher dimensions' was different from the other Qigong schools, which were focussing on healing illnesses and keeping fit." Master Li also says in the *Zhuan Falun* "If you cannot relinquish the attachment or concern for illness, we cannot do anything and will be unable to help you" and "you should not come to me for curing illnesses, and neither will I do such a thing. The primary purpose of my coming to the public is to guide people to high levels, genuinely guiding people to high levels." Finally, "Speaking of qigong, some people might say, 'Without an illness, who would practice qigong?' This implies that qigong is meant for healing illness. *That is a very, very shallow understanding.*" [emphasis added] [Footnotes removed]

[22] The Applicant argues that the RAD misapprehended the law in its *sur place* assessment. She asserts that the RAD required her to establish that her practice as a FG practitioner came to the attention of Chinese authorities where no such requirement exists.

[23] In its analysis, the RAD considers both the UN Handbook and the Board's materials and did not find them to be in conflict. It notes that the Board's material states that whether a claimant's actions abroad have come to the attention of authorities in the country of origin is a "key issue", but not a necessary precondition. Similarly, the UN Handbook states that "regard

should be had in particular” to whether authorities in the claimant’s country of origin may be aware of the claimant’s activities abroad. The RAD notes that where an Applicant’s credibility has been put into question, a greater evidentiary threshold may be required on *sur place* claims: *Mao v Canada (Citizenship and Immigration)*, 2020 FC 542 at para 45. I find no error in these statements of the applicable principles, nor in the RAD’s application of such principles. In the cases noted by the RAD, like the current case, credibility was in issue. The evidence was not sufficient to establish the *sur place* claim.

[24] As the evidence does not support a finding that the Applicant practices FG, it follows that the evidence cannot support a claim that the Applicant is a sincere FG practitioner or that she would be at risk in her country of origin.

[25] In my view, the Applicant has not demonstrated a reviewable error in the RAD’s analysis and the application should be dismissed.

[26] There was no question for certification proposed by the parties and I agree none arises in this case.

JUDGMENT IN IMM-5793-21

THIS COURT'S JUDGMENT is that

1. The application is dismissed.
2. No question of general importance is certified.

"Angela Furlanetto"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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