

Federal Court



Cour fédérale

**Date: 20220727**

**Docket: IMM-6740-20**

**Citation: 2022 FC 1122**

**Ottawa, Ontario, July 27, 2022**

**PRESENT: The Honourable Mr. Justice Ahmed**

**BETWEEN:**

**ZHIMING CHEN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicant, Zhiming Chen, seeks judicial review of the decision of the Refugee Appeal Division (“RAD”) dated July 30, 2020, affirming the decision of the Refugee Protection Division (“RPD”) that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“*IRPA*”).

[2] The Applicant fears persecution in China at the hands of the Public Security Bureau (“PSB”) on the basis of his religious beliefs. The RAD dismissed the Applicant’s appeal because it found that the Applicant was not credible, does not have memory problems as alleged, and is not a genuine Christian.

[3] The Applicant submits that the RAD erred in its analysis of his *sur place* claim. The Applicant further submits that the RAD erred in its assessment of his religious identity and his credibility.

[4] For the reasons that follow, I find the RAD’s decision is reasonable. Accordingly, this application for judicial review is dismissed.

## II. **Facts**

### A. *The Applicant*

[5] The Applicant is a 39-year-old citizen of China. The Applicant claims to be a Christian and a member of the Local Church (the “Local Church”) – also known as the ‘Shouters’ – an underground church in China.

[6] The Applicant alleges he was involved in a motorcycle accident on September 30, 2016 in which he was injured and his co-worker was killed. The Applicant claims he suffers from memory problems as a result of the accident. Following the accident, the Applicant claims he was introduced to Christianity by a friend and became a member of the Local Church.

[7] The Applicant states that on May 31, 2017, fellow members of his church were arrested and interrogated by the Public Security Bureau (“PSB”). Following this incident, he went into hiding, and sought the assistance of a smuggler to leave China. However, upon the release of his fellow church members, the Applicant came out of hiding and began attending church again.

[8] The Applicant states that on October 13, 2017, he was arrested by the PSB in relation to his religious activities. He was beaten and detained for one day. The Applicant alleges that before his release, the PSB told him he would be called in for further investigation. When he was released, he left China with the assistance of a smuggler.

[9] On November 18, 2017, the Applicant arrived in Canada. In Canada, he claims to have attended church services at “The Church in Toronto” (“The Church”).

B. *The RPD Decision*

[10] In a decision dated June 21, 2019, the RPD rejected the Applicant’s refugee claim on the basis that he was not credible and not a genuine Christian practitioner. The RPD made the following findings:

- There were a number of significant omissions, discrepancies and inconsistencies in the Applicant’s testimony and other evidence provided was not reasonably explained. The evidence is unreliable, inconsistent and not credible.

- The Applicant's assertion that he has significant memory issues that affect his testimony is not supported by the documentary evidence filed. The Applicant has not established on a balance of probabilities that he had a brain injury that affects his memory. A negative credibility inference is drawn.
- A negative credibility inference is drawn from the Applicant's testimony regarding the motorcycle accident, which was inconsistent with the documentary evidence filed, contrary and evolving. The Applicant could not remember the exact date of the accident, despite its significance, and failed to provide persuasive corroborating evidence regarding the incident.
- The Applicant significantly lacked knowledge of his faith. He could not articulate the reason why shouting is significant to his faith, and stated that spreading the gospel is not a duty of his faith, whereas the documentary evidence indicates that Local Church members have a duty to spread the gospel as part of their faith.
- The Applicant's testimony regarding a letter from The Church indicating that he has been attending services since November 19, 2017 undermines the letter's reliability. The RPD placed little weight on the letter.

C. *Decision Under Review*

[11] The Applicant appealed the RPD's decision to the RAD. In a decision dated July 30, 2020, the RAD dismissed the Applicant's appeal and affirmed the RPD's determination that the

Applicant is neither a Convention refugee nor a person in need of protection. The RAD made the following findings:

- The RPD was correct to draw a negative credibility inference from the Applicant's testimony regarding the motorcycle accident. When taking all of the evidence provided into account, at best, the Applicant has established that he was hospitalized on September 30, 2016, and that this resulted in jaw surgery. There is insufficient evidence to support his other allegations, including the motivation for joining the Local Church.
- The RPD was correct to find that the alleged memory loss issues are not supported by the evidence. On a balance of probabilities, the Applicant does not have a memory problem in the manner alleged.
- The RPD was correct to find that the Applicant is not a genuine Christian, including a member of the Local Church. The discrepancies correctly identified by the RPD are significant and relate to key tenets of the Shouter practice.
- The RPD erred by not specifically assessing the *sur place* claim. The RAD conducted its own analysis of the Applicant's *sur place* claim in relation to his Christian practice in Toronto. The Applicant lacked knowledge of Christianity and there were discrepancies between his testimony and the letter from The Church regarding when he began attending The Church in Canada. Based on this, the RAD

found that the Applicant is not a genuine Christian and accordingly has no *sur place* claim.

### III. **Issue and Standard of Review**

[12] The sole issue in this application for judicial review is whether the RAD's decision is reasonable.

[13] Both parties agree that the applicable standard of review in evaluating the RAD's decision is reasonableness. I agree (*Adelani v Canada (Citizenship and Immigration)*, 2021 FC 23 at paras 13-15; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (“*Vavilov*”) at paras 10, 16-17).

[14] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[15] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns

about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

#### IV. Analysis

##### A. *Assessment of the Sur-Place claim*

[16] The RAD conducted its own analysis of the *sur place* claim after finding that the RPD had erred by not addressing the issue. The RAD found that the Applicant is not a genuine Christian because he could not name significant Christian holidays other than Easter, and could not identify the significance of Easter to Christianity. The RAD also noted that the letter from The Church states that he began attending The Church one day after his arrival in Canada, while the Applicant testified that he began attending 15 days after his arrival. The RAD drew a negative inference from this discrepancy and found the contents of the letter from The Church to be unreliable.

[17] The Applicant submits that the RAD erred in its analysis of the *sur place* claim by deciding on an issue that the RPD did not consider and that the RPD record did not support. The Applicant argues that he did not have an opportunity to explain the discrepancy relied on by the RAD because the RPD did not specifically deal with the *sur place* issue. In addition to relying on an inconsistency that was not put to the Applicant, the RAD proceeded to make its

“independent assessment” based on a record that does not contain information significant to that determination. The RAD’s determination must be based on the RPD record. The RAD ought to have resubmitted the claim to the RPD to seek out and examine the appropriate evidence (*Ghamooshi v Canada (Citizenship and Immigration)*, 2016 FC 225 at paras 18-21 (“*Ghamooshi*”); *Jianzhu v Canada (Citizenship and Immigration)*, 2015 FC 551 (“*Jianzhu*”)).

[18] The Respondent asserts that the RAD reasonably found, “the [Applicant] is not a genuine Christian of any kind, including Christian Shouter. Accordingly, this also means that the [Applicant] has no *sur place* refugee claim.” The RAD’s findings are in keeping with the Applicant’s own submissions to the RAD, in which he argued that the RPD erred by failing to assess his *sur place* claim based on his Christian practice in Toronto, and that a *sur place* claim was made out based on the contents of the appeal record. The Applicant’s submissions to the RAD did not argue that the RAD could not determine the *sur place* issue due to a deficient record, or that the matter ought to be re-submitted to the RPD for a new hearing. The Applicant also did not seek leave to adduce new evidence in support of his *sur place* claim if the record was deficient, as alleged. The Respondent argues that the Applicant is engaging in an impermissible collateral attack on the RAD’s decision based on arguments not presented for consideration (*Yin v Canada (Citizenship and Immigration)*, 2022 FC 564 at paras 30-31 (“*Yin*”); *Canada (Citizenship and Immigration) v. R. K.*, 2016 FCA 272 at paras 6, 10; *Mai v Canada (Citizenship and Immigration)*, 2021 FC 61 (“*Mai*”) at para 44).

[19] I agree with the Respondent that it was not unreasonable of the RAD to find that the Applicant does not have a *sur place* claim after determining that he had not credibly established



that he is a genuine Christian (*Mai* at para 47). Furthermore, as noted by the Respondent, the RPD decision indicates that the inconsistency between the Applicant's testimony and the letter from The Church were in fact put to the Applicant during the hearing:

[42] The claimant provided a letter from "The Church in Toronto" which indicates that he has been attending services since November 19, 2017, has taken a study course and is now eligible for Baptism. However, the claimant's testimony regarding this letter undermines its reliability. The claimant initially testified that he began attending The Church about fifteen days after he arrived in Canada (he arrived on November 18, 2017). When asked why the letter stated he stated November 19, 2017, the claimant stated "actually I attended earlier than that date because I couldn't in the beginning because I went to a small group in a basement". When asked why the letter indicated that he started attending the Church one day after he arrived in Canada, the claimant stated that when he got the letter they said they would just put the day he arrived and he told them to put the day after.

[43] This indicates to the panel that the letter is not accurate or truthful. Counsel referred the panel to Exhibit 5 at page 66 which indicates that church policy is that confirmations of membership and meeting attendance are based on "available church records". However, the claimant's testimony indicates that the information regarding his attendance was based on a random date chosen because it was the day after he arrived in Canada and not on a review of church records. Accordingly, the panel places little weight on this letter. Additionally, the panel draws a negative credibility inference.

[20] The RAD's role is to independently review the RPD's decision on a correctness standard, focusing on errors identified by the Applicant (*Yin* at para 30, citing *Mekhashishvili v Canada (Citizenship and Immigration)*, 2021 FC 65 at para 17).

[21] To support his position, the Applicant relies on this Court's decision in *Ghamooshi*. At paragraph 20 of *Ghamooshi*, this Court notes that the RAD cannot raise a new issue not determined by the RPD without further notice to the parties:

This Court, in reading paragraph 111(1)(b) of the IRPA, has stated that the RAD, in and of itself, cannot raise a new issue, not determined by the RPD without further notice to the parties (*Ojarikre v Canada (Minister of Citizenship and Immigration)*, 2015 FC 896; *Jianzhu v Canada (Minister of Citizenship and Immigration)*, 2015 FC 551 [*Jianzhu*]). As such, it would be unreasonable for the RAD to independently decide on a *sur place* claim where the RPD did not make a determination on the matter (*Jianzhu*, above at para 12). As a result in view of the circumstances, it was incumbent on the RAD to give notice to the Applicants as to the RAD's undisclosed credibility concerns in respect of the Applicants.

[22] However, in this case, unlike in *Ghamooshi*, the Applicant directly raised the issue of a *sur place* claim in his submissions before the RAD. This was not an issue that the RAD raised independently.

[23] The Applicant also relies on *Jianzhu*, in which this Court states at paragraph 12:

In my view, the RAD lacked jurisdiction to independently decide the *Sur Place* Claim. The RAD did not cite any authority for taking this step, and section 111(1)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA] does not apply because there was no RPD decision to set aside. In these circumstances, since it felt that the issue ought to have been decided, the RAD should have referred the *Sur Place* Claim back to the RPD for a decision. Given that it did not take this approach, the RAD's decision was unreasonable.

[24] I find the case at hand to be distinguishable from *Jianzhu*. In *Jianzhu*, neither the applicants nor the RPD had raised a *sur place* claim and the issue was one of fairness to the applicants – as they had not been provided with an opportunity to address the *sur place* issue decided by the RAD. Here, the Applicant raised the issue of a *sur place* claim in his submissions to the RAD. As rightly noted by the Respondent, the Applicant also had the opportunity to introduce new evidence before the RAD and did not do so.

[25] I am satisfied that the RAD conducted an independent assessment of the *sur place* claim, including accounting for the Applicant’s submissions. I agree with the Respondent that the onus was on the Applicant to explain how the RPD erred, and how his attendance at The Church posed a prospective risk. I find that the RAD meaningfully grappled with the central issues and concerns raised by the Applicant in its analysis of the *sur place* claim (*Vavilov* at paras 127-128).

#### B. *Religious Identity*

[26] The Applicant submits that the RAD erred in its assessment of his religious identity by basing its determination on the Applicant’s religious knowledge without any consideration for the genuineness of his religious belief or the central aspect of his religious identity. At paragraph 18 of *Ren v Canada (Citizenship and Immigration)*, 2015 FC 1402 (“*Ren*”), this Court notes “[...] it is not the objectivity of a claimant’s religious beliefs that matters or their validity or correctness but, rather, the sincerity or genuineness of the claimant’s religious beliefs”.

[27] The Respondent does not dispute that the Applicant only needed to prove the genuineness of his faith. However, he still needed to tie his beliefs to the particulars of his religion – in this

case the Local Church – and he failed to do so. At paragraphs 11 and 12 of *Huang v Canada (Citizenship and Immigration)*, 2017 FC 1193, this Court notes:

[...] There must be sufficient substance to the claim of belief to satisfy a decision maker even if an Aquinian grasp of theology is not required.

[12] In this case the Applicant's inability to state some of the most fundamental precepts of the Shouters' beliefs is a reasonable basis to doubt both the claim in respect to China as well as the sur place portion of the overall claim.

[28] I agree with the Respondent. In my view, the RAD conducted a reasonable assessment of the Applicant's religious identity. Contrary to the Applicant's argument, I do not find that the RAD merely based its determination on the Applicant's religious knowledge. Despite claiming to have practiced almost weekly for 2.5 years, the Applicant demonstrated minimal knowledge of the Local Church and of the Christian faith more broadly. During the RPD hearing, the Applicant was posed broad, open-ended questions about his understanding of basic precepts of the Local Church and of significant Christian holidays, as well as how they relate to the genuineness or sincerity of his beliefs. Yet the Applicant's responses were vague and inconsistent with the documentary evidence on the practices of the Local Church. He was also unable to explain why his knowledge is so poor. It was thus reasonable of the RAD to affirm the RPD's finding that the Applicant failed to explain his knowledge of his faith in a meaningful way. The RAD's assessment is in keeping with *Ren*, in which this Court notes at paragraph 19:

In short, the RPD's questioning of a claimant about their religious beliefs will be defensible only if it goes to questions which focus on the sincerity of belief, and any finding of a lack of genuinely or sincerely held religious belief is founded not on the correctness of

the answers but, rather, on a claimant's inconsistent, vague, non-responsive or contradictory answers to such questions.

[29] Overall, I do not find that the RAD lost sight of the central question of the genuineness or sincerity of the Applicant's beliefs.

C. *The RAD's Credibility Concerns*

(1) **The Applicant's Supporting Documents**

[30] The Applicant submits that the RAD erred in finding that the PSB Detention Release Confirmation (the "PSB Letter") is an unreliable document. The RAD failed to apply the presumption of truthfulness, as foreign documents are presumed to be authentic and credible on their face unless there is valid reason to reject them (*Ramalingam v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 7241 (FC) at para 5). Furthermore, the RAD failed to assess the authenticity of the Cremation Certificate as evidence of the Applicant's co-worker's death. The RAD also erred by not assessing the authenticity of the documents. The Applicant relies on this Court's decision in *Lin v Canada (Citizenship and Immigration)*, 2012 FC 157 to submit: "Just because fraudulent documents are readily available in the PRC does not, for that reason alone, mean that the Applicant's documents were fraudulent" (at para 53).

[31] The Respondent maintains that the RAD reasonably found that the PSB Letter did not substantiate the Applicant's claim that he was arrested on October 13, 2017 due to his religious

practice. The RAD also reasonably found that the Cremation Certificate was insufficient to support the Applicant's allegations, including his motivation for joining the Local Church.

[32] I agree with the Applicant that simply because fraud is connected to documents obtained in China does not support the dismissal of a document on this ground alone (*Guo v Canada (Citizenship and Immigration)*, 2013 FC 400 at para 4). However, the RAD's reference to the easy availability of fraudulent documents in China was not the sole reason for giving no weight to the PSB Letter. The RAD also noted a lack of other evidence regarding the provenance of the PSB Letter and the lack of an arrest warrant or a notice of arrest to the Applicant's family.

[33] As rightly noted by the Respondent, on its face, the PSB Letter has no correlation to the Applicant and does not corroborate his alleged detention. The translation of the PSB Letter on record states: "Chen, Guo Long (male, born on October 13, 1978, address: 36 ShangCuo BaoMei Village, LongTian Town, FuQing City), has violate the Laws by joining illegal underground house church activities [...]". This does not correspond with the Applicant's name on the record (Zhi Ming Chen), his date of birth (October 30, 1982), or his address (10 XiCuo, WenFang Village, JiangJin Town, FuQing City). What more, the PSB Letter indicates that Mr. Guo Long Chen was detained on October 13, 2017, and released on November 12, 2017, whereas the Applicant alleges his detention only lasted one day. I find that it was therefore reasonable of the RAD to dismiss the PSB Letter based on a lack of evidence relating the PSB Letter to the Applicant, and insufficient evidence regarding the provenance of the document.

[34] With respect to the Cremation Certificate, the RAD found that it could not corroborate any other details beyond the date of death of the Applicant's co-worker who allegedly died in the same accident that led to the Applicant's injuries. The document indicates that someone by the name of Ding Guo Xue died on September 30, 2016 in an automobile accident. In my view, it was reasonable of the RAD to find that this certificate was insufficient to corroborate the Applicant's allegations, including those related to his motivation for joining the Local Church.

**(2) The Applicant's Memory Problems**

[35] During the RPD hearing, the Applicant explained that his testimony was impacted by his memory problems, which were the result of a head-injury. The RPD did not accept the Applicant's allegation of memory issues because it was not supported by medical evidence and was omitted from his Basis of Claim ("BOC") form. In conducting an independent analysis, the RAD found insufficient evidence to establish the Applicant's allegation of memory problems. The RAD observed that the medical documentation on record only refers to the Applicant's jaw surgery and makes no mention of brain trauma, memory loss or a coma, nor is there any evidence of treatment for memory loss in Canada. The Applicant's BOC makes no mention of head trauma or memory issues, and the Applicant did not apply for assistance or special arrangements at the RPD hearing in light of his memory issues.

[36] The Applicant submits that the RAD inappropriately characterized his memory loss as a credibility issue. The Applicant submits that he himself knows best whether he suffers from memory loss due to his accident, a fact that does not have to be based in medical evidence.

Simply because he has chosen to live with memory loss and not seek further medical attention does not make it less real, and does not mean that his testimony is lacking credibility.

[37] I am not convinced by the Applicant's arguments. I agree with the Respondent's argument that the RAD was not obliged to accept the Applicant's assertions that he suffers from memory loss to explain discrepancies in his testimony. Given the significance of the alleged memory loss issues, I find it was reasonable of the RAD to expect the Applicant to provide evidence of the memory loss or at the very least set out the issue in his BOC. As rightly noted by the Respondent's counsel during the hearing, the Applicant has also not provided an affidavit to explain how his memory loss affected his testimony, or why no accommodations were requested during the hearing. The onus remained on the Applicant to prove that the credibility issues that arose from his testimony were due to head trauma and associated memory problems. I find that the RAD reasonably determined that there was insufficient evidence of the Applicant's memory issues to explain the credibility concerns.

[38] Overall, I find that it was reasonable of the RAD to conclude that the Applicant failed to credibly establish his motivation for joining the Local Church and there was insufficient credible evidence to overcome the RAD's concerns.

## V. **Conclusion**

[39] For the reasons above, I find that the RAD conducted a reasonable assessment of the Applicant's *sur place* claim, his religious identity and his credibility. Accordingly, this



application for judicial review is dismissed. No questions for certification were raised, and I agree that none arise.

**JUDGMENT in IMM-6740-20**

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

1. The application for judicial review is dismissed.
2. There is no question to certify.

"Shirzad A."

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Judge

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

**DOCKET:** IMM-6740-20

**STYLE OF CAUSE:** ZHIMING CHEN v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** BY VIDEOCONFERENCE

**DATE OF HEARING:** MAY 31, 2022

**JUDGMENT AND REASONS:** AHMED J.

**DATED:** JULY 27, 2022

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