Federal Court Cour fédérale

Date: 20221220

Docket: IMM-4172-21

Citation: 2022 FC 1771

Ottawa, Ontario, December 20, 2022

PRESENT: Mr. Justice Norris

BETWEEN:

MEIMEI ZENG
XIANREN CHEN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants, a married couple, are citizens of China. They sought refugee protection in Canada on the basis of Ms. Zeng's fear that, as a practitioner of Falun Gong, she would be persecuted in China. The Refugee Protection Division ("RPD") of the Immigration and Refugee Board of Canada ("IRB") rejected the claims, finding that Ms. Zeng was not a genuine Falun Gong practitioner. The applicants appealed this decision to the Refugee Appeal Division

("RAD") of the IRB. The RAD dismissed the appeal, finding that Ms. Zeng "is not a Falun Gong practitioner and is not perceived to be one by the Chinese authorities."

[2] The applicants now seek judicial review of the RAD's decision under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*"). The parties agree, as do I, that the decision should be reviewed on a reasonableness standard.

[3] 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" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). A decision that displays these qualities is entitled to deference from the reviewing court (*ibid.*). When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances: see *Vavilov* at para 125. At the same time, reasonableness review is not a rubber-stamping process; it remains a robust form of review: see *Vavilov* at para 13. The reasonableness of a decision may be jeopardized where the decision maker "has fundamentally misapprehended or failed to account for the evidence before it" (*Vavilov* at para 126).

[4] The onus is on the applicants to demonstrate that the RAD's decision is unreasonable. To set aside a decision on this basis, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[5] For the reasons that follow, I have concluded that the RAD's decision is unreasonable.

[6] According to Ms. Zeng, she began practicing Falun Gong in June 2017 at the suggestion of a friend, Qian Mei Chen, to help ease her chronic back and neck pain. At the time, Ms. Zeng was 51 years of age. Since she had had little formal education and could neither read nor write, Ms. Zeng relied on Ms. Chen to teach her Falun Gong doctrines and practices. The two practiced and studied together. In July 2017, Ms. Zeng also began attending group practices in Fuqing City.

[7] According to Ms. Zeng, on November 1, 2017, a village security guard found her and Ms. Chen studying Falun Gong together. The guard took them to a police station in Fuqing City where they were questioned, beaten, and threatened with further investigation. They were ultimately released from police custody. The two stopped attending Falun Gong sessions after they realized that a neighbour must have reported them to the authorities.

[8] Concerned for their safety, in January 2018, Ms. Zeng's mother-in-law obtained Canadian visitor's visas for the applicants with the assistance of a smuggler. While waiting to leave China, Ms. Zeng was called to the police station on April 22, 2018.

[9] The applicants arrived in Canada on May 16, 2018. Three months later, they applied for refugee protection. Their claims were heard by the RPD on September 29, 2020.

[10] Ms. Zeng states that, since she has been in Canada, she has taken up Falun Gong practice again. She has attended group sessions in the Toronto area. She has also attended several public demonstrations against the persecution of Falun Gong adherents in China.

[11] As did the RPD, the RAD concluded that Ms. Zeng was not a genuine adherent of Falun Gong because her knowledge of its doctrines and practices is not commensurate with the experience and practice she claimed to have had in both China and Canada.

[12] It is well established that, provided the personal circumstances of the claimant and the particular features of the religion in question are taken into account, a decision maker may test the genuineness of a claimant's professed religious identity by considering whether their knowledge and understanding of the religion is commensurate with their claimed experience. See, among many other cases, *Gao v Canada (Citizenship and Immigration)*, 2021 FC 271, which the RAD cites and quotes from at length in its decision. The RAD concluded that Ms. Zeng's "limited knowledge of the belief system is incompatible with the level of experience she professes to have." The RAD therefore found that Ms. Zeng "is not a genuine practitioner, even having regard to her limited education and her nervousness at the hearing." Rather, she was merely pretending to be a Falun Gong practitioner.

[13] Standing on its own, this determination was reasonably open to the RAD. The applicants' objections to the RAD's determination simply invite this Court to reweigh the evidence and reach a different conclusion, something that is not its proper role on judicial review.

[14] The problem, however, is that this determination does not stand on its own. The critical flaw in the decision appears when one turns to the RAD's assessment of the applicants' supporting documentation.

[15] Among other things, that documentation included an Administrative Punishment Decision dated November 1, 2017, from the Public Security Bureau of Fuqing City. This document specifically alleges that Ms. Zeng "joined and spread illegal Falungong [*sic*] to others." The document notes that Ms. Zeng had been investigated in this connection but was being released pending further investigation. Should she be summoned, she must attend and "cooperate for further investigation." Consistent with the applicants' narrative, the document also notes that it was a security guard who had reported Ms. Zeng to the police that day. As well, the applicants also provided a letter from Ms. Chen that describes the experiences with the police that she and Ms. Zeng underwent on November 1, 2017. The letter specifically mentions the accusation that the two of them were spreading Falun Gong to others.

[16] The RAD does not doubt the authenticity of these documents; rather, it states that these documents "appear authentic on their faces." Both, however, are obviously inconsistent with the RAD's conclusion that Ms. Zeng "is not a Falun Gong practitioner *and is not perceived to be one by the Chinese authorities*" (emphasis added). Even if, as I have found, the RAD reasonably determined that Ms. Zeng is not a genuine Falun Gong practitioner, it does not follow that she is not perceived to be one by the Chinese authorities. In fact, the Administrative Punishment Decision and the letter from Ms. Chen suggest the exact opposite. Having accepted that they appear to be genuine, the RAD's failure to engage in any way with these documents before

drawing a conclusion that is altogether inconsistent with their contents leaves the decision lacking in justification, transparency and intelligibility on a central issue.

[17] As a result, this application must be allowed. The RAD's decision will be set aside and the matter remitted for redetermination by a different decision maker.

[18] Finally, the parties have not suggested any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that none arise.

JUDGMENT IN IMM-4172-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed.
2. The decision of the Refugee Appeal Division dated May 18, 2021, is set aside and the matter is remitted for redetermination by a different decision maker.
3. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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