

Federal Court



Cour fédérale

Date: 20221102

Docket: IMM-4215-21

Citation: 2022 FC 1499

Toronto, Ontario, November 02, 2022

PRESENT: Justice Andrew D. Little

BETWEEN:

WEIJUN DING

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant applied to this Court to review a decision of the Refugee Appeal Division (the “RAD”) made on May 26, 2021. He submitted that the decision was unreasonable under the principles described in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653.

[2] The RAD's decision dismissed an appeal from the Refugee Protection Division (the "RPD"). Both concluded that the applicant was not entitled to protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the "IRPA").

[3] The applicant is a citizen of China. He was Chairman, general manager and the main shareholder of a business that borrowed money at a high interest rate from private lenders. He and his former wife co-signed the loan documents. The business could not repay the money.

[4] The RAD stated that the applicant feared "returning to China as he believes that the moneylenders with whom he has an overdue business loan, have engaged the Public Security Bureau (PSB) to jointly persecute him". The applicant's claim was based on his testimony and documents, including a PSB subpoena (or summons) dated September 17, 2018.

[5] The RAD found that overall, the RPD decision was correct. The RAD first considered a number of alleged errors in the RPD's decision as raised by the applicant. However, it found that the determinative issue on the appeal was the applicant's submission that the "involvement of the PSB with the loan sharks, and the PSB pursuit of him as evidenced in the September 17, 2018 summons, supports the central allegation that he is at risk ... on return to China".

[6] The RAD's analysis concluded overall that the applicant was not credible. It agreed with the RPD that the applicant's evidence around the issuance and receipt of the summons was "vague, in the context of the importance of that document, and the implication of a continued PSB pursuit". The RAD found that the applicant provided vague, evolving, and insufficiently credible testimony about how he obtained the subpoena, as he was already in Canada when it was issued.

[7] The RAD concluded that the PSB subpoena was fraudulent, based on numerous deviations in both form and content from samples in the National Documentation Package for China. The subpoena referred to inapplicable provisions in Chinese legislation. It also required the applicant's appearance on the same day it was issued; the RAD found it was not credible to believe that the PSB would have slipped it through the applicant's parents' mailbox rather than deliver it personally.

[8] As the PSB involvement was "intricately tied" to the applicant's claims for protection, the RAD found that the RPD was correct that the applicant was not credible.

[9] The submission of a false document led the RAD to find that the credibility of other documents filed in support of his appeal was undermined.

[10] The RAD concluded the applicant had provided insufficient credible evidence to establish his appeal. The RAD decided that the applicant was neither a Convention refugee nor a person in need of protection under the *IRPA*.

[11] On this application, the standard of review is reasonableness. Reasonableness review is a deferential and disciplined evaluation of whether the RAD's decision was transparent, intelligible and justified: *Vavilov*, at paras 12-13 and 15. The Court's review considers both the reasoning process and the outcome: *Vavilov*, at paras 83 and 86. A reasonable decision is one that 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*, esp. at paras 85, 99, 101, 105-106 and 194.

[12] The applicant raised two principal (and related) issues to challenge the reasonableness of the RAD's decision.

[13] First, the applicant submitted that the RAD's decision was unreasonable because it only addressed the threat from the PSB but did not consider the separate threat from the moneylenders and the thugs who acted as its enforcers. The applicant argued that he feared the threats of both agents of persecution and the RAD ignored one. He pointed to evidence of harassment and threats to him and his family from the lenders and gangsters, which he submitted were sufficient to justify a positive determination of his claim.

[14] At the hearing in this Court, the applicant pointed to places in the applicant's testimony discussing the threats of the thugs or gangsters that did not involve the PSB, and to his submission to the RPD that said he feared threats from criminals and also the PSB. According to this argument, the RAD erred by concluding that the threats were intertwined. By ignoring the otherwise credible evidence of the gangsters' threat and focusing only on the PSB subpoena, the RAD failed in its duty to consider and assess the merits of the persecution he feared from the gangsters. The applicant relied on the following passage from *Zoja v Canada (Citizenship and Immigration)*, 2011 FC 1079, at para 19:

In my view, the Board focused entirely on the part of the applicants' claim relating to a long-standing family feud. It was entitled to conclude that the applicants' evidence relating to that situation was not credible. However, it also had a duty to consider the other grounds put forward by the applicants and consider their merits. The fact that their evidence relating to the feud was not credible did not excuse the Board from considering those other grounds. As I stated in *Joseph v Canada (Minister of Citizenship and Immigration)*, 2011 FC 548, at para 11:

The Board must be careful not to dismiss a refugee claim on the basis that it disbelieves parts of the claimant's testimony, or evidence that does not go to the core of the claim. Sometimes claimants embellish their stories, or they forget minor details. It is unreasonable for the Board to dismiss claims simply because they find evidence at the fringes not to be reliable or trustworthy. Even if the Board finds some evidence not to be credible, it must go on to consider whether there remains a residuum of reliable evidence to support a well-founded fear of persecution.

[15] The applicant's second submission concerned the RAD's reasoning that rejected all of his evidence. Soon after the RPD hearing, the applicant submitted additional evidence, including a letter from his former spouse in China. The applicant claimed that she was also being pursued for the debt. They divorced to try to insulate her from the threats. The letter provided information supporting his position and describing some events after the applicant left China for Canada, including threats to the applicant's wife and their daughter.

[16] The applicant's position at the RAD was that the RPD erred because it did not admit the letter as evidence but still used it to impugn his credibility. In its decision, the RAD found that because the letter, "accepted or not", was not determinative, any error by the RPD had no effect on the outcome of the appeal.

[17] In this Court, the applicant submitted that the RAD erred by making no express finding as to the admissibility of the letter. According to the applicant, the RAD also erred by finding that its two conclusions, that the letter was non-determinative and the PSB subpoena and pursuit was determinative, permitted it to reject all of the applicant's evidence. The applicant submitted that there was credible evidence unrelated to the PSB subpoena that supported the gangster threat to

him that should have been assessed, but was not. The applicant referred to the threatening texts he received just before he left for Canada and just after he arrived.

[18] The respondent emphasized the many reasons identified by the RAD to conclude that the PSB subpoena was fraudulent. The respondent noted the RAD's conclusion that the fraudulent subpoena led to general findings of non-credibility of the applicant and his documents, and the RAD's overall conclusion that the applicant failed to provide sufficient credible evidence to establish his appeal.

[19] The respondent contended that there was evidence that tied the moneylender and its thugs with the PSB, noting that the applicant testified at the RPD hearing that PSB officers were "part of the gangsters" and were involved in protecting the moneylenders.

[20] For the following reasons, I conclude that the application for judicial review must be dismissed.

[21] First, the RAD's overall conclusions concerned the credibility of the applicant. The RAD considered the applicant's testimony at the RPD to support his claim for *IRPA* protection. The RAD agreed with the RPD that the applicant's testimony was "vague" concerning the issuance and receipt of the PSB subpoena and had "evolved" concerning how he obtained it while he was in Canada. These findings led the RAD to find that the applicant's evidence was "not sufficiently credible". The applicant's submissions to this Court did not impugn this line of reasoning.

[22] The RAD analyzed the form and content of the purported PSB subpoena and concluded it was fraudulent. The applicant did not challenge the RAD's conclusion on this issue.

[23] The RAD found that the fraudulent summons undermined the credibility of the remaining documents relied upon by the applicant in support of his appeal. The RAD stated that the submission of a false or irregular document may have an impact on the weight assigned to other documents provided by the applicant, especially when the documents are interrelated (citing *Uddin v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 451 at para 10). The applicant did not submit that the RAD made a legal error in that statement. It reflected recent case law: *Jiang v Canada (Citizenship and Immigration)*, 2021 FC 572, at para 40.

[24] The RAD concluded that the applicant had provided insufficient credible evidence to succeed on the appeal. The applicant has not demonstrated a reviewable error in these aspects of the RAD's reasoning.

[25] Second, I do not find that the RAD was overly zealous or microscopic in its approach to the applicant's evidence and his credibility. Its focus on the PSB subpoena was not an irrelevant, peripheral or fringe matter in the applicant's claim. The RAD's approach did not offend the principles set out in cases such as *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116, at paragraph 11 and *Jamil v Canada (Minister of Citizenship and Immigration)*, 2006 FC 792, at paragraph 24 (cited by the applicant). See also *Sellathambi v Canada (Citizenship and Immigration)*, 2022 FC 1227 and the cases cited in *Shi v Canada (Citizenship and Immigration)*, 2022 FC 196, at paragraph 53.

[26] Third, I find insufficient basis to intervene on the grounds that the RAD should have considered the applicant's fear of persecution or mistreatment by the moneylenders or gangsters separately from any threat from the PSB. For the applicant's submission to succeed, the RAD

would have had to misunderstand the nature of the applicant's claim or misapprehend the evidence. The applicant's submissions have not persuaded me that the RAD did so, considering how the applicant characterized his claim, the contents of the applicant's Basis of Claim narrative and RPD testimony, and the applicant's positions at the RPD and RAD. Taken as a whole and in the context of the uncontested or reasonable findings noted above, I am not convinced that the applicant's evidence and position required the RAD to consider whether there was a residuum of reliable evidence of a threat from moneylenders and gangsters as contemplated in *Zoja*.

[27] Broadly speaking, the applicant's claim for *IRPA* protection related to threats from moneylenders, gangsters and the PSB in China. During the hearing in this Court, both parties referred to specific parts of the RPD hearing transcript to support their respective positions about the (non-)integration of the threats the applicant claimed to fear.

[28] The applicant was asked at the RPD hearing why he feared returning to China. The applicant testified that "[t]here is a PSB and underworld like organized crime people who have been looking for me and associated with it is [P2P or peer to peer] money lending matter". Asked immediately if the PSB is looking for him, he answered: "Yes". He confirmed that a summons had been issued for him after he left China.

[29] The applicant's Basis of Claim narrative referred to two loans and described attempts in July and August 2018 by the first lender and two gangsters to enforce the first loan and by shareholders of the second lender and the PSB to enforce the other loan. In relation to the first loan, the applicant's narrative advised that two gangsters came to see him in July 2018 to enforce repayment on a loan, and then kept him under surveillance day and night after that. The applicant

began to sleep away from his home to protect his family. In relation to the second loan, two shareholders of the lender and a PSB official came to his office in early August to demand payment, and the PSB officer threatened fraud charges against him if he did not repay.

[30] The applicant's narrative advised that in mid-August, the two gangsters (i.e. related to the first loan) went to his wife's place of employment, asking for her papers. At the RPD hearing, the applicant testified that the gangsters threatened the applicant's wife and tried to force her to repay the loan with her own money, and continued to pursue her (and their daughter) even up to the hearing. He advised that they cannot live with his wife's parents as the gangsters could find the wife's parents' home – PSB officers were part of the gangsters and could find the location. (During his RPD testimony, the applicant used the term “gangsters” interchangeably with organized crime people associated with the lenders.)

[31] Asked if PSB officers were part of the gangsters, he answered “Yes. Certainly ... certainly yes.” He testified that the lenders were involved in the underworld and that the police (i.e., PSB) were involved to protect the moneylenders (who lent with very high interest rates).

[32] At the RPD hearing, the applicant was also asked why a PSB officer came to the applicant's office in early August 2018 with the two lender shareholders. He gave several responses. He first advised that a section or office of the PSB was in charge of keeping the social order. “But some of this PSB officer [sic] that involved with P2P lending or the gangsters, they're still very actively involved with all this matter”. The applicant then advised that “this PSB official actually [was] a stockholder” of the lender that made the second loan and was part of that company, which was why the PSB officer showed up at his office at that time. The RPD member asked why the PSB would get involved in one matter (the repayment of the second loan)

and not another matter (to assist him when the gangsters visited him in July 2018). The applicant answered that the PSB got involved because there was social unrest in the city where that PSB officer was located due to the P2P lending, bankruptcy of borrowers and inability of borrowers to repay.

[33] It is true that the applicant's claim involved evidence about two loans and that PSB officer(s) seem to have been more involved with trying to collect on the second loan than the first. However, the applicant's evidence was that he feared the PSB, criminal moneylenders, their enforcing thugs or gangsters, and the PSB officials involved with the lenders and gangsters. His hearing testimony that PSB officers were "part of the gangsters" occurred during a discussion of the gangsters involved with the first loan attempting to locate his wife and daughter (or perhaps gangsters generally seeking them in relation to both loans).

[34] I note also that neither the applicant's RPD submissions nor his submissions to the RAD requested that the threats be assessed separately, or made a clear distinction between them. The applicant's post-RPD hearing submissions recited facts in his Basis of Claim narrative – which mostly concerned the moneylenders and gangsters – but did not materially account for his additional testimony at the hearing. The RPD submissions referred to the risk posed to the applicant "not only from criminals but also the PSB", a phrase that does not resolve the present issue. The applicant's RAD submissions stated that to be "summonsed to appear by the PSB signifies, obviously, that the [applicant] was wanted by the PSB", which was "strong evidence" that he was at risk for *IRPA* purposes.

[35] Considering all of these circumstances, I conclude that the applicant has not demonstrated that the RAD made a reviewable error by failing to assess the evidence of threats

from the moneylenders and gangsters separately from the evidence of threats from the PSB. As such, the RAD did not make a reviewable error by failing to apply the passage from *Zoja*, quoted above, to this case.

[36] Lastly, the RAD found that the additional evidence filed after the RPD hearing (the applicant's wife's letter) was not determinative of the appeal and that the existence of the fraudulent PSB subpoena relied upon by the applicant to support his claim was determinative. Given the analysis above, those conclusions were both reasonably open to the RAD.

[37] The application is therefore dismissed. Neither party proposed a question to certify for appeal and none will be stated.

JUDGMENT in IMM-4215-21

THIS COURT’S JUDGMENT is that:

1. The application is dismissed.
2. No question is certified for appeal under paragraph 74(d) of the *Immigration and Refugee Protection Act*.

“Andrew D. Little”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4215-21

STYLE OF CAUSE: **WEIJUN DING v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 24, 2022

**REASONS FOR JUDGMENT
AND JUDGMENT:** A.D. LITTLE J.

DATED: NOVEMBER 2, 2022

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