

Federal Court



Cour fédérale

Date: 20230307

Docket: IMM-6918-21

Citation: 2023 FC 314

Ottawa, Ontario, March 7, 2023

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

JIALONG XING

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Jialong Xing (“Mr. Xing”), is a Chinese citizen who sought refugee protection in Canada based on fear of persecution because of his participation in an underground church in China. The Refugee Protection Division [RPD] denied Mr. Xing’s claim for protection because it did not find him credible in his allegations that he attended an underground church in China nor that he was wanted by the authorities because of this involvement. The RPD also did

not accept that there was a basis to allow the claim based on Mr. Xing's religious activities in Canada (*sur place* claim). Mr. Xing appealed the RPD's refusal to the Refugee Appeal Division [RAD]. The RAD dismissed the appeal, finding Mr. Xing not credible in his allegations and finding no basis to support a *sur place* claim. Mr. Xing challenges the RAD's dismissal in this application for judicial review.

[2] Mr. Xing challenges the RAD's decision on three grounds: the RAD's credibility determination, the RAD's assessment of the *sur place* claim, and whether the RAD failed to do its own independent assessment. After carefully reviewing the RAD's reasons, Mr. Xing's arguments before this Court and the RAD, and the rest of the record, I do not find that there is a basis for this Court to intervene. There are no sufficiently serious shortcomings identified in the RAD's decision to render it unreasonable.

[3] Based on my reasons below, the application for judicial review is dismissed.

II. Background

[4] Mr. Xing alleges that he began attending an underground church in China in October 2017. In March 2018, Mr. Xing alleges that he went to Europe with fellow church members to visit various Christian holy sites and historic churches.

[5] On July 16, 2018, Mr. Xing came to Canada with colleagues on business. After approximately six days in Canada, on July 22, 2018, Mr. Xing learned from his mother that Chinese authorities raided the underground church he attended and that church members were in

hiding. The following day, Mr. Xing's mother informed him that the Public Security Bureau had come to his home looking for him and left a search warrant, summons, and coercive summons.

[6] The RPD heard Mr. Xing's claim on October 16, 2020 and dismissed it on December 9, 2020. Mr. Xing appealed to the RAD. He did not submit new evidence on appeal. The RAD denied the appeal on September 14, 2021.

III. Issues and Standard of Review

[7] There are three issues raised in this judicial review: whether the RAD's credibility determination was reasonable; whether the RAD conducted an independent assessment of the claim; and whether the RAD's evaluation of the *sur place* claim was reasonable.

[8] The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption.

IV. Analysis

A. *Independent Assessment*

[9] Mr. Xing makes an overarching argument that the RAD failed to independently assess his claim. The RAD is required to independently assess the record, determine whether the RPD erred, and come to its own determination of the claim (*Canada (Minister of Citizenship and*

Immigration) v Huruglica, 2016 FCA 93 at para 103). As noted by Justice Diner in *Jeyaseelan v Canada (Minister of Citizenship and Immigration)*, 2017 FC 278 at paragraph 19: “An overly obsequious support for and reinforcement of all RPD findings can bring into question the independence of the RAD’s analysis.”

[10] Mr. Xing takes issues with a number of findings made by the RAD. He argues that each is an unreasonable assessment of the evidence, which I will address below, and further that each is an example of the RAD’s failure to undertake an independent assessment.

[11] I have considered each of the examples Mr. Xing raised and do not find any provide a basis to determine the RAD failed to conduct an independent assessment. Mr. Xing seems to take issue with the amount of space in the RAD’s reasons devoted to summarizing the RPD’s determination on the various points he challenged on appeal. I do not find this indicates that the RAD did not conduct an independent assessment. On each issue, the RAD provided its own assessment, responding to the argument Mr. Xing made on appeal while also taking into account the RPD’s determination. I do not find this approach demonstrative of a failure to conduct an independent assessment of the claim.

B. *Credibility Determination*

[12] The RAD did not accept that Mr. Xing participated in an underground church in China, nor that he was sought by the authorities in China for his participation. The RAD based this determinative credibility finding on its cumulative consideration of a number of negative credibility determinations. The RAD noted some of the individual negative inferences were not

determinative on their own. The credibility concerns set out by the RAD included: false statements and documents provided to Canadian authorities on previous unrelated immigration applications, inconsistent testimony at the RPD hearing about the availability of a medical booklet, limited evidence about participation in the underground church in China, and the inconsistency between the sample coercive summons provided in the National Documentation Package and the one provided by Mr. Xing.

[13] Mr. Xing asserts the RAD's review of the evidence on each of these points is unreasonable. In my view, Mr. Xing's arguments about each of these credibility findings amount to a disagreement with how the RAD weighed the evidence and Mr. Xing's arguments. This is not a basis to interfere with the RAD's findings. None of Mr. Xing's challenges are with respect to a fundamental misapprehension of the evidence or the RAD's failure to take into account the evidence before it.

[14] I similarly do not find any serious shortcoming in the RAD's analysis of the coercive summons Mr. Xing provided. The RAD noted the discrepancies with the relevant sample and considered the explanation provided by Mr. Xing. The RAD also considered the jurisprudence cited by Mr. Xing on appeal about the careful assessment required when relying on sample documents in the National Documentation Package. The RAD did not find the problems identified in the jurisprudence regarding this comparative analysis were at issue in this case given the evidence before it. I see no basis to interfere with this evaluation.

[15] At the judicial review hearing, Mr. Xing's counsel pointed to the RAD's failure to address the evidence that corroborated Mr. Xing's faith, particularly focusing on Mr. Xing's trip to Europe prior to coming to Canada and his photos of religious sites. Mr. Xing argued that the RAD failed to take into account how much of Mr. Xing's trip was devoted to visiting these sites and that this went to the sincerity of his beliefs. The RAD did not find this evidence particularly probative of the issue before it, namely whether Mr. Xing attended an underground church prior to coming to Canada. The RAD also noted that it is not just Christians who visit those sites. The RAD's evaluation of this issue took into account the evidence and submissions before it and is a rational assessment given the record. There is no basis for me to interfere with the RAD's analysis on this point.

C. *Sur Place Claim*

[16] Mr. Xing also argued that the RAD's evaluation of his *sur place* claim was unreasonable. Mr. Xing provided evidence of his regular participation in church activities in Canada. The RAD did not find this evidence determinative of the claim, concluding it did not assist in establishing the sincerity of his Christian beliefs. Moreover, the RAD found that Mr. Xing did not argue that the authorities in China would likely be aware of his activities in Canada. In light of the negative credibility findings about Mr. Xing's allegations that he was being sought by the authorities because he was a member of an underground church in China and the nature of the evidence on the *sur place* claim before the RAD, the RAD's assessment is reasonable. Mr. Xing has not identified a sufficiently serious shortcoming in this analysis.

V. Disposition

[17] The application for judicial review is dismissed. Neither party raised a question for certification and I agree that none arises.

JUDGMENT IN IMM-6918-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and
2. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6918-21

STYLE OF CAUSE: JIALONG XING v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: SEPTEMBER 21, 2022

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: MARCH 7, 2023

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