

Federal Court



Cour fédérale

Date: 20230329

Docket: IMM-5850-22

Citation: 2023 FC 434

Toronto, Ontario, March 29, 2023

PRESENT: Madam Justice Go

BETWEEN:

XUEDONG LIN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REAONS

I. Overview

[1] The Applicant, Mr. Xuedong Lin, a citizen of China, made a claim for refugee protection on the ground that he fears persecution from the Chinese authorities because of his Christian faith and membership in an underground church.

[2] The Applicant alleges that he began attending an underground Christian church in May 2018 and that in December 2018, many churches were raided and closed by Chinese authorities. As a precaution, his church suspended service for three months and resumed in April 2019 in a fellow parishioner's farmhouse.

[3] On October 5, 2019, the Public Security Bureau [PSB] allegedly arrived and searched the farmhouse, interrogating the Applicant and the owner of the farmhouse about illegal religious services reportedly taking place there. The Applicant was detained at the local police station and was interrogated further and beaten. The Applicant claims that after being held overnight, he was released upon the payment of a 5,000 RMB fine to the PSB, and was forbidden from engaging in any illegal religious activities and warned that he could be summoned again.

[4] Out of fear, the Applicant hired a smuggler and fled China for Canada on February 26, 2020 using a fake passport. The Applicant made a claim for refugee protection and participated in a point of entry [POE] interview shortly after his arrival, and another interview on November 2, 2020 about his refugee claim [refugee interview].

[5] The Refugee Protection Division [RPD] rejected his claim in February 2022 on credibility grounds. In a decision dated June 1, 2022, the Refugee Appeal Division [RAD] rejected the Applicant's appeal of the RPD decision and confirmed that he is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Decision].

[6] The Applicant seeks judicial review of the Decision. I grant the application as I find the Decision unreasonable.

II. Issues and Standard of Review

[7] The Applicant submits that the RAD committed a series of reviewable errors in making negative credibility findings about the following:

- a. The Applicant's POE interviews;
- b. Documents corroborating the Applicant's PSB detention, namely the Administrative Punishment Decision and the PSB Receipt; and
- c. The Applicant's religious knowledge.

[8] The parties agree that the Decision is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[9] 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. The onus is on the Applicant to demonstrate that the Decision is unreasonable: *Vavilov* at para 100. 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.

III. Analysis

[10] At the hearing, counsel for the Applicant submitted that the determinative issue is the RAD's unreasonable findings with respect to the corroborative documents and focused their arguments on this issue alone. The Respondent replied that the overall credibility concerns surrounding the Applicant's arrest and detention, stemming in part from the POE interviews, cannot be extricated. The Respondent submitted that irrespective of the RAD's errors concerning the corroborative documents, if any, its findings still stand on all grounds.

[11] Having reviewed the Decision, I find that the RAD's credibility findings are tied to its assessment of the authenticity of the corroborative documents. As such, I find it necessary to address both aspects of the RAD's findings. Given my conclusion that the RAD erred in its determination of both these issues, I need not address its assessment of the Applicant's religious knowledge.

A. *The RAD's findings of inconsistencies were unreasonable*

[12] The Applicant submits that the RAD made erroneous findings of inconsistencies surrounding (1) the Applicant's responses at the POE interviews and (2) the Applicant's testimony at the RPD hearing about his arrest by the PSB.

(1) The POE Interviews

[13] The RAD agreed with the RPD that the Applicant did not credibly establish his motivation for his departure from China or desire to come to Canada. Specifically, both the RPD and RAD took issue with the discrepancy between the Applicant's response at his POE

interviews (i.e. lack of employment opportunities in China) and his statement at the RPD hearing that the only reason he left China was to flee religious persecution.

[14] The Applicant argued on appeal that the RPD was microscopic in its findings and asked too few questions about his motivations at the RPD hearing to clarify any concerns arising from the POE interviews. In rejecting this argument, the RAD focused on the fact that the refugee interview took place nine months after the Applicant's arrival in Canada. The RAD opined that this delay gave him time to consider how and when to make a refugee claim and the opportunity to experience religious freedom after he began attending a Canadian church in March 2020. The RAD concluded that the RPD's negative credibility finding was correct, as the lack of employment opportunities is entirely different from fearing religious persecution.

[15] The Applicant argues that the RAD's finding about the POE inconsistencies is unreasonable. The Applicant reiterates that he was asked few questions at the POE interviews and was not asked to elaborate.

[16] Having reviewed the record, I find that the RAD erred in its assessment of the POE interviews.

[17] I note, as the Respondent submits, that during the refugee interview on November 2, 2020, the Applicant was asked why he could not return to China and what would happen if he did. The Applicant answered "[i]t's better to stay in Canada" and that it would be "difficult to make a living" in China.

[18] However, I also note that right at the start of the refugee interview, the Applicant was asked by a Canada Border Services Agency [CBSA] officer why he came to Canada, to which he replied: “because of involvement in Christianity and fear of being arrested by the police.” The Applicant was subsequently asked a series of questions relating to his refugee claim, including about his arrest and detention and knowledge about Christianity. The Applicant responded to all these questions.

[19] The following exchange between the CBSA officer and the Applicant then took place, as recorded in the transcript of the refugee interview:

Q: Tell me about your life in China?

A: Farming.

Q: Where did you live in China?

A: I lived in Fujian province.

Q: What was your job in China?

A: I was farming, and then I worked at a stainless steel factory.

Q: How long did you do the factory job for?

A: From 2000 to 2018.

Q: What was your annual earning?

A: About 30 000RMB.

Q: How did you manage to secure 200 000RMB to arrange your trip to Canada?

A: Borrowed it.

Q: How much debt do you have now?

A: I owe the money that I paid to leave, the 200 000RMB.

Q: Who do you owe it to?

A: Families and friends.

Q: Why can you not return to your country of citizenship?

A: It's better to stay in Canada.

Q: What would happen if you returned to China?

A: It is difficult to make a living in China.

[20] Thus, according to the transcript of the refugee interview, the Applicant's statement that “[i]t's better to stay in Canada” and “difficult to make a living in China” was made right after the

officer questioned the Applicant about his job in China and financial situation. It was in this context that the Applicant mentioned the better job prospects in Canada over China. I would also note that even then, the Applicant did not cite this as his motive for coming to Canada in the first place. Rather, it was offered as a reason to “stay in Canada.”

[21] I also note that during the February 29, 2020 Refugee Front-End Examination [Front-End Examination], which was conducted just hours after the Applicant arrived from Shanghai, the Applicant stated up front that he is making a refugee claim because he was beaten up by police officers for “doing a worship service.”

[22] In the Decision, the RAD did not mention the context in which the impugned statements were made by the Applicant, nor did it refer to the Front-End Examination during which the Applicant declared his intention to file a refugee claim.

[23] As the Applicant submits, this Court has warned against placing too much emphasis on POE statements due to the “circumstances surrounding the taking of those statements” often being “far from ideal”: *Wu v Canada (Citizenship and Immigration)*, 2010 FC 1102 at para 16; see also *Cetinkaya v Canada (Citizenship and Immigration)*, 2012 FC 8 at paras 50-51; *Hamdar v Canada (Citizenship and Immigration)*, 2011 FC 382 at paras 46-48; *Jamil v Canada (Minister of Citizenship and Immigration)*, 2006 FC 792 at paras 24-25.

[24] Likewise, this Court has cautioned against relying on differences between POE statements and testimony before the RPD, as POE interviews are often conducted with the use of

interpreters and claimants are instructed to be brief: *Sawyer v Canada (Minister of Citizenship and Immigration)*, 2004 FC 935 at paras 5-7.

[25] In this case, the Applicant did declare his intent to make a refugee claim upon his arrival in Canada. While the Applicant may also have indicated some months later that he wanted to stay in Canada because of the difficulties in making a living in China, I find the RAD erred when it found that the Applicant “could not articulate” his fear of religious persecution as “the main reason why he could not return to China.” This finding, which signals that the RAD was microscopic in its analysis and unduly relied on only select parts of record to justify its conclusion, lacks transparency and justification and renders the Decision unreasonable.

(2) The PSB Detention

[26] The RPD found that the Applicant gave inconsistent testimony detailing his alleged arrest by the PSB, and found on a balance of probabilities that the Applicant was not arrested by the PSB for any participation in religious services.

[27] The RAD adopted in part the RPD’s findings:

The RPD found that the [Applicant] gave inconsistent testimony regarding the circumstances of his arrest by the PSB. The [Applicant] could not establish whether he was detained by the PSB while praying or while cleaning. These are two different actions.

[28] Having reviewed the relevant excerpt of the RPD hearing, I agree with the Applicant that the RAD conducted an impermissibly microscopic analysis of his testimony at the RPD hearing.

Read as a whole, the Applicant's testimony indicates that he was cleaning the church in preparation for prayers when the PSB arrived.

[29] The relevant excerpt of the RPD hearing is set out below:

MEMBER: I see. What exactly were you doing when you were arrested?

CLAIMANT: Because on that day, I was in the church, we were praying and then PSB came in, said it's illegal religious activities, but we kept denying at, so they took me to the PSB station.

MEMBER: Where were you praying?

CLAIMANT: It was in my village near the hill side. It was in a farm.

MEMBER: So, you were in the midst of praying when you were interrupted by the PSB?

CLAIMANT: It was we were prepared to pray and then PSB stopped and officers came.

MEMBER: Okay. Were you praying or were you preparing to pray?

CLAIMANT: I was preparing to pray.

MEMBER: Okay. How were you preparing to pray? What were you doing?

CLAIMANT: It's usually we need to do some cleaning before the praying because there was no pastor, only an organiser. We have one (1) Bible, so we were cleaning before the praying.

MEMBER: Okay. So, you said earlier you were praying, now you are saying you were cleaning.

CLAIMANT: I just said my answer...

MEMBER: Sorry?

CLAIMANT: I am just saying my answer was I was preparing for my praying, and at that time PSB came.

MEMBER: Well, earlier when I said what exactly were you doing when you were arrested, you said you were praying.

CLAIMANT: Sorry, it was at the beginning to get ready for praying, that was when I was cleaning.

MEMBER: How does cleaning prepare for praying?

CLAIMANT: Because that farm was long time nobody using it, it was abandoned, so that's why we need to do some cleaning first to prepare for praying.

[30] While there may have been some initial confusion concerning the Applicant's testimony as to what exactly he was doing when the PSB arrived, the Applicant clarified that confusion immediately by explaining that he was cleaning the abandoned farmhouse as part of the preparation for praying.

[31] I reject the Respondent's submission that it was open for the RAD to find that the RPD correctly assessed the Applicant's inconsistent accounts about the circumstances surrounding his arrest by the PSB. Not every inconsistency or implausibility in a claimant's evidence will reasonably support a negative credibility finding: *Mohacsi v Canada (Minister of Citizenship and Immigration)*, [2003] 4 FC 772 (TD) at para 20.

[32] In this case, I am not convinced there was in fact any inconsistency in the Applicant's testimony, let alone one that could justify a negative finding of credibility by the RPD and RAD.

[33] In light of the above errors, which I find determinative of the RAD's inconsistency findings, I need not address the other arguments raised by the Applicant regarding the inconsistencies found by the RAD.

B. *The RAD's findings concerning the corroborative documents were unreasonable*

[34] The Applicant argues that the RAD committed reviewable errors in assessing two determinative corroborative documents submitted to support his claim that he was arrested by the PSB: the Administrative Punishment Decision and the PSB Receipt.

[35] The Administrative Punishment Decision states that the Applicant was brought to the local PSB office for investigation and was issued a 5,000 RMB fine and a warning to not join any illegal “cult group” activities in the future and to comply with future investigations.

[36] When examining the evidence of the circumstances surrounding the Applicant’s arrest by the PSB, the RAD briefly noted that the Administrative Punishment Decision contains no security features and is easy to fabricate.

[37] However, as the Applicant points out, the Administrative Punishment Decision does have security features, most notably an official PSB stamp, which constitutes a known and reliable security feature: *Zheng v Canada (Citizenship and Immigration)*, 2008 FC 877 at paras 18-19.

[38] Further, I disagree with the Respondent that regardless of this error, the Decision remains reasonable. The RAD relied in part on its finding that the Applicant provided an inauthentic PSB document to conclude that the Applicant was not arrested by PSB for participation in religious services. The RAD’s error with respect to the Administrative Punishment Decision thus tainted its overall findings on the Applicant’s account of his arrest and detention.

[39] The RAD made a similar error with the PSB Receipt submitted by the Applicant as evidence corroborating his claim that he paid 5,000 RMB to be released from his detention. The RAD noted that, like the Administrative Punishment Decision, the PSB Receipt contains no security features and is easy to fabricate. Once again, I find the RAD erred. The PSB Receipt does in fact contain an official PSB stamp.

[40] I also find unreasonable the RAD's determination that the PSB Receipt contained a material inconsistency. Namely, the RAD took issue with the PSB Receipt being dated October 5, 2019, when the Applicant had testified that he was detained on October 5 but released on October 6, 2019, after posting the bail money on that day.

[41] The RAD justified its finding by stating: "No explanation was given for why the payment receipt would be dated and stamped prior to payment being received the following day." I note, however, that when asked why the PSB Receipt was dated October 5 at the RPD hearing, the Applicant replied: "That could be a mistake. It should be on the 6th that I was released." The RPD did not ask any follow up questions.

[42] In other words, the Applicant did provide an explanation. It was up to the RAD to reject the explanation, but it did not do so. Instead, it found that no explanation was given.

[43] The Respondent argues overall that the RAD reasonably discounted the PSB documents because there was a sufficient evidentiary basis for doing so, an approach upheld by this Court in various cases: *Jin v Canada (Minister of Citizenship and Immigration)*, 2006 FC 126 at paras 18-19; *Gasparyan v Canada (Minister of Citizenship and Immigration)*, 2003 FC 863 at para 7; *Wang v Canada (Citizenship and Immigration)*, 2011 FC 636 at para 18; *Su v Canada (Citizenship and Immigration)*, 2012 FC 743 at paras 12-15; *Liang v Canada (Citizenship and Immigration)*, 2013 FC 765 at para 77.

[44] I find the cases cited by the Respondent distinguishable on the facts, as there were other serious credibility concerns with respect to the claims in question, which were found by the Court to be justified based on the evidence.

[45] I also find that the RAD failed to explain why the difference of one day constitutes a material inconsistency to the extent of impugning the Applicant's credibility, given that foreign documents are presumed to be authentic: *Chen v Canada (Citizenship and Immigration)*, 2015 FC 1133 at para 10.

[46] Since I find the RAD's assessment of the Applicant's credibility flawed, I also reject the Respondent's submission that the RAD appropriately relied on the Applicant's general lack of credibility to influence its assessment of documents corroborating the Applicant's claim of being arrested by the PSB: *Bueso Trochez v Canada (Citizenship and Immigration)*, 2013 FC 1016 at para 35.

IV. Conclusion

[47] The application for judicial review is allowed.

[48] There is no question to certify.

JUDGMENT in IMM-5850-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The decision under review is set aside and the matter referred back for redetermination by a different decision-maker.
3. There is no question to certify.

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT
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DOCKET: IMM-5850-22

STYLE OF CAUSE: XUEDONG LIN v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

DATE OF HEARING: MARCH 22, 2023

JUDGMENT AND REASONS: GO J.

DATED: MARCH 29, 2023

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