Federal Court  Cour fédérale

Date: 20230515

Docket: IMM-5420-22

Citation: 2023 FC 683

Ottawa, Ontario, May 15, 2023

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

HAO JIA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review application of a decision made by a Senior Immigration Officer concerning the pre-removal risk assessment [PRRA] concerning the Applicant. The judicial review was authorized pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act or IRPA].

[2] For the reasons that follow, the application must be dismissed.

I. The facts

[3] The facts of this case are very simple. The Applicant, a Chinese national, claimed that he was attending a Christian service in China on October 21, 2012, when the "house church" was raided by the Public Service Bureau [PSB]. The worshippers were alerted by the front door lookout and they were able to escape by the back door. The Applicant hid for four months and, with the assistance of a smuggler who apparently obtained a Canadian Visitor Visa, arrived in Canada on February 7, 2013. He claimed that the PSB searched for him in China even after he had left the country. The Applicant was 19 years old when he arrived in Canada.

[4] The Applicant sought refugee status which was denied.

II. The Refugee Protection Division decision

[5] The Refugee Protection Division [RPD] found the claim based on the fear to be persecuted by reason of the Applicant's Christianity to lack credibility.

[6] The main issue was the incapacity of the claimant to relate any information about his alleged faith. Most obvious questions, like what his favourite Bible story is, were not answered. The same about the story of Adam and Eve. That is in spite of the Applicant having professed to studying the Bible assiduously, especially while in hiding for four months after the "house church" had been raided. The RPD considered that the Applicant did not demonstrate a level of knowledge that a reasonable person would expect from someone with professed history of church attendance and Bible study would have.

[7] The RPD then turned to the documentary evidence offered by the Applicant which tends to show that the Chinese authorities generally do not bother with congregations of Christian followers under 25 worshippers.

[8] Finally, the RPD was quizzical concerning how the Applicant obtained a Chinese passport, the use of it to leave China in spite of continued interest in him by the authorities, and what happened to it once he arrived in Canada.

[9] The RPD decision was not challenged.

III. The PRRA decision

[10] A departure order was issued on June 6, 2013. The Applicant did not leave. Rather, he presented himself to the Canada Border Services Agency [CBSA] on November 30, 2021. The Notice of Arrest states that he was not present for a removal interview that was to take place on February 24, 2014, which resulted in a warrant for his arrest to be issued. The Notice reports that the Applicant did not attend the interview "because he was scared he would be sent back home. He was asked if he has fear to go back and he stated "I'm scared to return because of the Chinese government". He stated he would like to apply for PRRA and have his risk assessed." The Notice goes on to report that the Applicant "stated he would like to remain in Canada and make a better life for himself".

[11] The PRRA decision came on April 28, 2022. While the Applicant had claimed before the RPD that he was afraid he would be persecuted in China because of his religious practice of

Christianity, he contended in his PRRA application that he had become a practitioner of Falun Gong in 2018. He attends group practices and theories studies every weekend. He participates in spreading Falun Gong flyers in public. The Applicant asserts that with the aggressive restrictions of the practice and the persecution against practitioners in China, he will be unable to practice safely and without fear. In support of his contention, a letter from another Falun Gong practitioner was submitted, together with photographs featuring the Applicant participating in Falun Gong activities and country condition documents relating to Falun Gong in China.

[12] The Senior Immigration Officer noted that the Applicant did not mention his involvement with Falun Gong when he surrendered to CBSA on November 30, 2021. The fact that his credibility had already been found to be lacking by the RPD when he claimed his fear of the Chinese authorities, because of his alleged religious practice of Christianity and his involvement with “house churches”, was also raised.

[13] As for the letter in support presented by the Applicant, it was criticized as being merely a handwritten letter, as opposed to a sworn declaration. The photographs carry little weight as they do not assist in demonstrating that he is a genuine practitioner of Falun Gong.

[14] The Senior Immigration Officer also commented on the current country conditions. It was acknowledged that China is an authoritarian state where there exist significant human rights issues. Nevertheless, the problems encountered are said not to be unique to the Applicant. It is noteworthy that the Officer, in quoting from various sources (US Department of State, Amnesty International, Freedom House), focused on the situation of the Muslim Uyghurs.

[15] The conclusion reached is that there was little evidence provided by the Applicant to support a claim that he will be persecuted because he is a Falun Gong practitioner. In other words, “there is little evidence demonstrating that the general country conditions in China represent a personalized risk for the applicant” (Decision, p 9 of 9).

IV. Arguments and analysis

[16] The challenge on judicial review is based on the contention that the PRRA decision is not reasonable. The Applicant also contends that there were errors of law which should be reviewed on a correctness standard. This is obviously not the case; if there are errors of law, they are to be assessed on a reasonableness standard (*Canada (Minister of Citizenship and Immigration v Vavilov)* 2019 SCC 65, [2019] 4 SCR 653, para 25-26, 53, 69 [*Vavilov*]).

[17] It appears that the Applicant’s main argument is that the PRRA Officer relied on the failed refugee claim as the primary basis for the negative PRRA conclusion. Furthermore, the Officer found against the Applicant in part because he did not disclose when he presented himself to be arrested that his fear of returning to China was based on his practice of Falun Gong. The last argument consists of a general statement that the Officer did not assess properly reports that illustrate aggressive prosecution and mistreatment of Falun Gong practitioners in China.

[18] In fact, the Applicant relies heavily on what he refers to as “accumulative errors”, “too many errors”, and “so many mistakes and reviewable errors”. The difficulty is that these are statements unsupported by the evidence or adequate arguments.

[19] On judicial review, the starting point is for the reviewing court to apply the principle of judicial restraint (*Vavilov*, para 13) and take a posture of respect toward the decision maker who has been designated by Parliament to decide matters on their merit (*Vavilov*, para 14). Furthermore, the burden is on the Applicant to show that the decision is not reasonable (*Vavilov*, para 100). That calls for shortcomings that will be serious and, in the words of the *Vavilov* Court, "the court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable" (para 100).

[20] That obviously begs the question: what are the hallmarks of reasonableness? The Supreme Court in *Vavilov*:

> [99] A reviewing court must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision: *Dunsmuir*, at paras. 47 and 74; *Catalyst*, at para. 13.

The reasonable decision will be based on an internally coherent reasoning and it will be justified in light of the legal and factual constraints that bear on the decision.

[21] The Applicant was not successful in discharging his burden. The PRRA Officer can take into consideration the credibility findings made by the RPD (*Ghorbanniay Hassankiadeh v Canada (Citizenship and Immigration)*, 2023 FC 33, para 11). When he presented himself to the authorities after many years living in Canada without status, he did not even raise the practice of Falun Gong as a reason for fearing a return to his country of citizenship. The hand written letter of support was not given much weight as it was not even sworn and did not speak to the

Applicant's motivation for attending: simply stating that the Applicant is a genuine practitioner does not carry weight. The Officer reviewed the country conditions reports submitted by the Applicant. Various portions of reports are cited in the decision. In effect, the decision is that there was insufficient evidence to show that he would be targeted for being a Falun Gong practitioner and that he would be subject to risk of persecution, torture, risk to life or risk of cruel and unusual treatment if he went back to China.

[22] There were good reasons for giving little weight to the narrative in the PRRA application. It was a general lack of probative evidence which made the PRRA Officer deny the application.

[23] Before this Court, it has not been shown what the shortcomings may be which could make the decision unreasonable, as was the Applicant's burden. It has not been shown how the reasoning could be seen as being internally incoherent or how the decision is not justified in view of the factual or legal constraints.

V. Conclusion

[24] The judicial review application must be dismissed as the Applicant did not discharge his burden. The parties were canvassed and no serious question of general importance was suggested. There is no question to be certified pursuant to s 74 of the Act.

JUDGMENT in IMM-5420-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Yvan Roy"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5420-22
STYLE OF CAUSE:	HAO JIA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	MAY 12, 2023
JUDGMENT AND REASONS:	ROY J.
DATED:	MAY 15, 2023

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