

Federal Court



Cour fédérale

Date: 20230601

Docket: IMM-1855-22

Citation: 2023 FC 765

Toronto, Ontario, June 1, 2023

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

XINGWANG LIU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, a citizen of China, claims a fear of persecution or risk of harm in China as a Falun Gong practitioner. He seeks judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board dated January 26, 2022, in which the RAD confirmed the decision of the Refugee Protection Division [RPD] that the Applicant was not a Convention refugee or a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] In considering the Applicant's appeal, the RAD noted similarities between the Applicant's Basis of Claim [BOC] narrative and another applicant's BOC narrative (referred to by the RAD as Appeal 2), both applicants being represented by the same counsel (who is not the Applicant's present counsel). The RAD raised its concern with the parties and invited the parties to make submissions and/or provide further evidence addressing the following: (a) comments and/or explanations regarding the similarities and/or regarding the existence of the other similar narrative; and (b) submissions as to the significance, if any, of the similarities and as to what findings, if any, should result from the similarities and/or the existence of the other similar narrative, including, without limitation, whether the similarities and/or the existence of the other similar narrative have any impact on the credibility of the Applicant and his claim.

[3] In response to the RAD's invitation, former counsel for the Applicant provided submissions in order to explain how the two narratives came to be so similar. Counsel explained that: (a) the story told in both narratives is the story told by almost all claimants whose claims are based on being Falun Gong practitioners from China; (b) the fact pattern in these narratives is common to almost every Falun Gong claim; (c) when assisting claimants in completing their BOC and providing their narratives, certain questions have to be answered; (d) as the claimants' answers disclose a common fact pattern, there are only so many ways to set out those answers; and (e) any similarities in language, whether striking or not, are simply a reflection of that truism. However, no evidence was provided by the Applicant himself to explain how his narrative was drafted.

[4] The RAD determined that the Applicant had not met his onus of credibly establishing, on a balance of probabilities, the truth of his explanation for the striking similarities between his

narrative and the narrative in Appeal 2, or that the narrative in his case was his own. The RAD found that the absence of evidence from the Applicant explaining the similarities in the narratives or establishing that his narrative was his own suggests that such evidence does not exist because he did not write his own narrative. Given the central role played by a BOC narrative in a refugee claim, the RAD held that their finding that the Applicant's narrative was not his own automatically undermined the allegations underlying his claim. The RAD therefore did not go on to consider the RPD's other credibility findings.

[5] The sole issue for determination on this application is whether the RAD's assessment regarding the Applicant's credibility was reasonable. This issue is to be reviewed on a reasonableness standard [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 25].

[6] When reviewing for reasonableness, the Court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified. 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 [see *Vavilov, supra* at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adenijj-Adele v Canada (Minister of Citizenship and Immigration)*, 2020 FC 418 at para 11].

[7] This Court has found that it is not unreasonable to draw a negative inference as to credibility from unwarranted similarities between a refugee claimant's narrative and the narrative of other unrelated claimants [see *Ravichandran v Canada (Citizenship and Immigration)*, 2015 FC 665 at para 18]. However, while decision makers may rely on their common sense in drawing negative credibility inferences from unwarranted and striking similarities between the testimony or evidence of claimants, it is equally true that decision makers must use their common sense to determine whether, in the circumstances of the case, there is a valid reason for the similarity. If there is, it would not be appropriate to find that the similarity casts doubt on the claimant's credibility [see *Ravichandran, supra* at para 19; *Zhang v Canada (Minister of Citizenship and Immigration)*, 2006 FC 550 at paras 25-28].

[8] The Applicant asserts that the RAD erred by ignoring evidence as to why the narratives in this case and in Appeal 2 were similar, noting that the narratives in the two matters were prepared by the same counsel, following a similar process and that it is "a reasonable possibility that they were produced by the same interpreter".

[9] Contrary to the Applicant's assertion, it is evident from the RAD's reasons that it expressly considered the Applicant's submissions (there was no evidence) as to why the narratives were similar, including that the claimants had the same counsel and followed a similar process (i.e. list of questions). However, the RAD found that the explanation offered by the Applicant did not adequately explain the issues with the similarities between the two narratives. In particular, the RAD found that while claims having a similar basis may at times be broadly similar as counsel ensures that each claimant addresses important issues, the RAD noted that the problem with the

narratives under consideration is that they were not only broadly similar, but that the details were strikingly similar and elements peripheral to the claim were also strikingly similar. Some of these elements included the communications between the claimants and their wives about permission being given to practice Falun Gong and later being revoked, the involvement of cousins who connected the claimants with smugglers, and the involvement of their landlords in Toronto connecting them with other Falun Gong practitioners. In the circumstances and in particular, in the absence of any evidence from the Applicant himself as to how his BOC narrative was prepared, I find that it was reasonably open to the RAD to find that the Applicant did not provide a valid reason for the similarity.

[10] With respect to the Applicant's assertion regarding the possibility that the narratives were produced using the same interpreter, I find that this assertion has no merit as it is based entirely on speculation. There was no evidence (or even submissions) before the RAD that the two narratives were prepared with the assistance of an interpreter, yet alone the same interpreter.

[11] Accordingly, I am not satisfied that the Applicant has demonstrated that the RAD's decision was unreasonable. The application for judicial review shall therefore be dismissed.

[12] The parties propose no question for certification and I agree that none arises.

JUDGMENT in IMM-1855-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. The parties proposed no question for certification and none arises.

"Mandy Ayles"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1855-22

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