

Federal Court



Cour fédérale

Date: 20231024

Docket: IMM-6212-21

Citation: 2023 FC 1407

Ottawa, Ontario, October 24, 2023

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

ZHENG, XICHI

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Xichi Zheng, seeks judicial review of a decision made by the Refugee Appeal Division (RAD) on August 23, 2021, denying the Applicant's claim for refugee protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [IRPA].

[2] For the reasons that follow, I am dismissing this application.

II. Background

[3] The Applicant is a citizen of China. The Applicant and his wife worked as fish farmers on land they leased from the local government.

[4] In January 2017, the local government gave notice that it was expropriating the land in March 2017 for which it offered a set amount of compensation. The Applicant considered the amount to be inadequate.

[5] The Applicant then began to meet with other affected people in his community, who prepared a letter to advocate for their position. They also met with the local mayor to protest their treatment. The Applicant, with his group, visited the deputy director of the National Land Bureau to further contest their treatment, but they were informed these were matters under the jurisdiction of the local government.

[6] On March 4 and 5, 2017, the Applicant and his group held a protest, which was eventually broken up by the police.

[7] Some of the protesters were arrested. The Applicant escaped and went into hiding. He learned that a *chuanpiao* (summons) had been left at his home by the Public Security Bureau (PSB) for involvement in the illegal organization of protest riots and he was ordered to report to

the PSB on March 7, 2017. He learned that the PSB returned on March 10, 2017 to look for him and at least one of the other protesters had been arrested.

[8] Following the aftermath of the events mentioned above, the Applicant hired a smuggler and left China on July 4, 2017. The Applicant stated that the smuggler took his passport and did not return it to him.

[9] On November 30, 2020, the Refugee Protection Division (RPD) determined that the Applicant was not a Convention refugee and was not a person in need of protection and therefore, his claim was rejected. The RPD found the Applicant was not credible regarding the return of his passport, his exit from China and his time in hiding. Due to these credibility concerns and his vague testimony, the RPD gave no weight to the summons submitted by the Applicant and to his testimony about the PSB's continued interest in his whereabouts.

[10] The Applicant appealed the RPD decision. On August 23, 2021, the RAD denied the Applicant's claim for refugee protection under section 96 and subsection 97(1) of the *IRPA*, after concluding the Applicant was not a Convention refugee and not a person in need of protection.

III. **Decision under Review**

[11] The RAD found it was not necessary to deal substantively with the Applicant's narrative. It determined the matter on the assumption that the Applicant's narrative of events was true. The RAD identified the determinative issue to be whether there is a nexus between the harm feared by the Applicant and the Refugee Convention or a likelihood of harm under subsection 97(1) of

the *IRPA*. The RAD further noted that it did not need to consider whether the RPD's credibility findings were correct because the lack of a nexus to the Convention is determinative.

[12] The RAD disagreed with the Applicant's claim that the RPD failed to give clear reasons and determined that the RPD considered the evidence relating to the actions taken by the Applicant, his role in these actions, and his motivation for taking such actions. For the same reasons as were relied upon by the RPD to find that the Applicant had not established his conduct was anti-government political opinion, the RAD also found the evidence was insufficient to establish the Applicant's conduct would be perceived by the Chinese authorities as anti-government political opinion.

[13] The RAD determined that the RPD did not fail to heed a requirement that political opinion be broadly defined. The RAD found the conduct of the Applicant was isolated, politically insignificant, and insufficient evidence was provided to conclude whether the Applicant was expressing political opinion or the Chinese authorities perceived him to be doing so. Referring to *Canada (Attorney General) v Ward*, 1993 CanLII 105 (SCC), [1993] 2 SCR 689 [Ward] for the definition of political opinion, the RAD disagreed with the Applicant that the definition is so broad as to include protests that are monetary in nature, rather than political.

[14] The RAD however relied on different case law, noting there is clear legal precedent for a finding that a monetary dispute that is found to be focussed on the amount of compensation allocated for an expropriated property cannot be considered as a political dispute just because it is against a government decision. The RAD noted that even if the Applicant shouted slogans

against the government, where the Applicant's protest is found to be monetary in nature, it may still be reasonable to find that his actions would not amount to political opinion.

[15] Based on the reasons mentioned above, the RAD determined there was not a serious possibility of persecution under section 96 of the *IRPA*. It also found the Applicant had not established a claim under subsection 97(1) of the *IRPA*.

IV. **Issues and Standard of Review**

[16] The Applicant submits the RAD's suggestion that assessment of the RPD credibility findings can be avoided is unreasonable.

[17] The Applicant also submits that the RAD's suggestion that the RPD reasons were clear, while at the same time conceding that the RPD neglected to consider how the Chinese government would perceive the Applicant's actions, was both erroneous and unreasonable.

[18] Finally, the Applicant submits the RAD erred by narrowing the definition of political opinion when it wrongly characterized the Applicant's activities as merely a financial dispute rather than an expression of political opinion. As a result, the Applicant states the RAD misapprehended whether there was a nexus to the Convention definition.

[19] The parties agree, as do I, that the standard of review is reasonableness. The Supreme Court of Canada has established that when conducting judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty

of procedural fairness, the presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]. While this presumption is rebuttable, no exception to the presumption is present here.

[20] A reasonable decision is one that displays justification, transparency and intelligibility with a focus on the decision actually made, including the justification for it: *Vavilov* at para 15. Overall, 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* at para 85.

V. Analysis

[21] I do not agree with the RAD's reliance on *Zhao v Canada (Minister of Citizenship and Immigration)*, 2020 FC 929 [*Zhao*] and the Respondent's characterization of the case. The underlying RPD decision in that case refused that applicant's claim based on adverse credibility findings and, in the alternative, found that even if they had been credible, the circumstances would represent prosecution not persecution. Justice Southcott addressed the applicant's arguments concerning the latter, and held the RPD's finding that there was no nexus to political opinion was reasonable. Then he stated it was unnecessary to address the applicant's arguments concerning credibility because nexus was determinative for the judicial review *Zhao*, at para 43:

[43] Having reached this conclusion, it is unnecessary to consider the Applicants' arguments challenging the RPD's adverse credibility findings surrounding their allegations of pursuit by the PSB. Even if those findings were to be overturned, it would not affect the outcome of this application for judicial review, because of the RPD's conclusions that the Applicants' allegations do not engage sections 96 or 97.

[22] This finding was also clearly made in the context of this judicial review. It is strange for both the RAD and the Respondent to rely on this paragraph for the proposition that board members do not need to address credibility if nexus is not established. While it is true, the citation does not propose this outcome. Nonetheless, the Applicant's argument of failing to address the credibility issues is without merit. I do not agree that this methodology is somehow circular. The definition of a Convention refugee states that a claimant's fear of persecution must be "by reason of" one of the five enumerated grounds. Failure to establish nexus to a Convention ground fails to bring the fear of persecution into the realm of refugee protection.

[23] The RAD considered the Applicant's argument that the RPD failed to consider how the Applicant's conduct was perceived by the Chinese authorities. It noted that there was indeed a failure to make a finding on this point. It then conducted its own independent assessment of the record and found that the evidence was insufficient to establish that his conduct would be perceived by the Chinese authorities as anti-government political opinion. Though the reasons are brief, I bear in mind that the written reasons must not be assessed against a standard of perfection: *Vavilov* at para 91.

[24] I disagree with the Applicant that the RAD erred by narrowing the definition of political opinion. What is apparent in the Applicant's arguments is his unfounded contention that an act against the government is sufficient to ground a refugee claim in political opinion. The Applicant's protest may very well be political in the broad definition of involving political entities, in this case the Chinese government and the PSB. However, what is required for refugee protection is not just political involvement, but a political opinion whether genuinely held by the

claimant or imputed by the agents of persecution. No such opinion was held by the applicant, nor was one imputed to him.

[25] The Applicant argues that the RAD “narrowed” the definition of political opinion in its assessment of *Ward*. The RAD’s analysis of the principles of *Ward* was thorough. The RAD found that on the facts of that case, the “Supreme Court imputed a political motive to Mr. Ward’s conduct – i.e. assisting hostages he was guarding to escape – noting that he believed that killing innocent people to achieve social change was unacceptable and that allowing the hostages to escape was the only option that accorded with his conscience. It stressed that Mr. Ward’s conduct was an ‘an isolated incident devoid of greater implications’ and his decision to assist the hostages to escape was characterized as ‘politically significant,’ both from his perspective and that of his alleged agent of persecution – which, it held, considered him to be ‘a political traitor.’”

[26] Contrary to the Applicant’s argument, the RPD recognized the importance of considering the perception of the agents of persecution in the assessment of the claim. I find no error in the RPD’s analysis of *Ward*. It is thorough and emphasizes the Supreme Court’s ultimate ruling that “Not just any dissent to any organization will unlock the gates to Canadian asylum; the disagreement has to be rooted in a political conviction”: *Ward* at p. 750.

[27] Given the foregoing, I find no reason to interfere with the RAD’s finding that the conduct of the Applicant was isolated, devoid of greater importance, and politically insignificant.

VI. **Conclusion**

[28] I find the RAD's reasons for the Decision display justification, transparency and intelligibility with a focus on the decision actually made, including the justification for it as required by *Vavilov* at paragraph 15.

[29] I also find the Decision is based on an internally coherent and rational chain of analysis and, it is justified in relation to the facts and law that constrained the RAD, as required by *Vavilov* at paragraph 85.

[30] For all the reasons set out above, this application for judicial review is dismissed.

JUDGMENT in IMM-6212-21

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no serious question of general importance for certification.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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