

Federal Court



Cour fédérale

**Date: 20231205**

**Docket: IMM-7533-22**

**Citation: 2023 FC 1641**

**Ottawa, Ontario, December 5, 2023**

**PRESENT: Madam Justice Sadrehashemi**

**BETWEEN:**

**CHUI LIN SUEN  
WAI LIM**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicants, Chui Lin Suen and Wai Lim, are brother and sister. They came to Canada over twenty years ago as students and remained in Canada without valid immigration status. In 2018, the siblings asked for refugee protection in Canada, claiming fear of persecution in Hong Kong because their father was imprisoned in China due to his Tantra religious beliefs

and his sympathy for Tibet. The Applicants' refugee claims were dismissed by the Refugee Protection Division [RPD]. They appealed this dismissal to the Refugee Appeal Division [RAD]. The RAD allowed the appeal, sending the matter back to the RPD for redetermination. The RPD then refused the claim and the Applicants appealed again to the RAD. The RAD refused the appeal. It is this decision of the RAD that is the subject of judicial review.

[2] The RAD, like the RPD, determined that the Applicants had failed to establish a well-founded fear of persecution and that they face a forward-looking risk upon return to Hong Kong. The RAD, like the RPD, drew a number of negative credibility inferences based on inconsistencies in the evidence, insufficient corroborative evidence, and a delay in making a refugee claim in Canada.

[3] The Applicants argue that the RAD undertook a microscopic evaluation of the evidence to find inconsistencies, unreasonably required corroborative evidence, and provided no justification for not accepting the Applicants' explanation for their delay in making a refugee claim in Canada. The parties agree, as do I, that I should review the RAD's decision on this issue on the basis of a reasonableness standard.

[4] I do not find that the Applicants have raised any sufficiently serious shortcoming in the RAD's analysis on the inconsistencies in the evidence and the lack of corroborative evidence. However, I agree with the Applicants that the RAD failed to explain why it did not accept the Applicants' explanation for their delay in making a refugee claim.

[5] Despite agreeing with the Applicants on this point, I do not find the delay issue can serve as a basis for sending the case back to be redetermined by the RAD. The finding on delay in claiming was not central to the RAD's ultimate determination that the Applicants had failed to establish a well-founded fear of persecution. Accordingly, I find, in the circumstances of this case, that sending the matter back on this issue would not make a difference in the outcome.

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

## II. Analysis

### A. *Delay in Claiming*

[7] The RAD set out the Applicants' explanation for their delay in claiming: that they received advice that they would not be successful because of the lack of evidence to support their claim, and therefore they feared if they brought themselves to the attention of the Canadian authorities, they would be deported and face persecution. The RAD also noted that the Applicants made a refugee claim when their lack of valid immigration status came to the attention of the Canada Border Services Agency.

[8] The RAD did not explain why it did not accept the Applicants' explanation for their delay in claiming. It simply noted it and then concluded it would be drawing a negative credibility inference. This is not sufficient justification because there is no reasoning as to why the RAD did not accept the Applicants' explanation for their delay.

[9] I do not, however, find the RAD's lack of justification on this point to be a sufficient basis to overturn the RAD's decision and send it back for redetermination. As noted by the RAD and by this Court many times, delay in claiming is not a determinative issue (*Wang v Canada (Citizenship and Immigration)*, 2023 FC 1487 at para 24). In this case, the negative inference based on the delay in claiming was clearly not a central part of the RAD's reasoning or interwoven in its analysis on why the Applicants had failed to establish a well-founded fear of persecution in Hong Kong.

B. *Inconsistencies in the Evidence*

[10] The RAD noted several inconsistencies in the Applicants' evidence. The key inconsistencies were the Applicants' different testimonies about when their mother was first asked by the Chinese authorities about their whereabouts, and whether their mother renounced her religion or refused to do so when asked by the Chinese authorities. I have reviewed the transcripts of the hearings, and the RAD's reasons; I am not persuaded by the Applicants' argument that these were minor inconsistencies on peripheral issues.

[11] On these issues, the differences were not minor: the mother renounced her religion or she did not; and the mother was asked about their whereabouts a few months after their father was arrested, or it happened two to three years after he was arrested. A key issue for the RAD was the authorities' interest in the Applicants in Hong Kong, twenty years after their father's arrest in China and their mother's treatment by the authorities while she has been living in Hong Kong over the last twenty years. It was reasonably open to the RAD to find that there were inconsistencies in the Applicants' evidence on these issues. The Applicants have not raised a

sufficiently serious shortcoming or fundamental flaw in the RAD's analysis (*Vavilov* at paras 100, 125-126).

[12] At the judicial review hearing, Applicants' counsel argued that since it was a *de novo* hearing at the RPD on redetermination, the evidence from the previous hearings should not have been used to find inconsistencies in the evidence. I do not agree. As I explained at the judicial review hearing, in this case, there was no determination made that the record from the first RPD hearings could not be put before the RPD on redetermination; in fact, it was clearly listed as part of the record before the RPD on redetermination. Nor was any argument made to the RPD on redetermination, to the RAD, or to me on judicial review, as to the basis for not having the previous record of the hearing testimony be before the RPD on redetermination.

C. *Corroborative Evidence*

[13] There was limited corroborative evidence filed in this case. The Applicants submitted a few letters from the Applicants' father's co-workers and his brother that confirmed their father was arrested because he practiced the Tantra religion and because he supported Tibet. The RAD accepted the Applicants' father was arrested and imprisoned. The RAD found that it had insufficient evidence that the Applicants faced a forward-looking risk in Hong Kong.

[14] As noted above, key to the Applicants' claim was their assertion that their mother was repeatedly asked about their whereabouts by the authorities in China. The RAD noted the inconsistencies in the Applicants' evidence on this point, as described above.

[15] The RPD put its concerns about the limited evidence in this case to the Applicants and asked for an explanation for the lack of corroborative evidence from the Applicants' mother. This is consistent with the approach set out by this Court in *Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968 at paragraph 36.

[16] The Applicants explained that their mother did not provide evidence because since she was under surveillance by the authorities, the authorities would learn about the Applicants' whereabouts. The RAD, like the RPD, did not accept the Applicants' explanation for the lack of corroborative evidence. The RAD found the Applicants' explanation inconsistent with their evidence that their mother had sent the other letters of support that they filed in evidence at the RPD. This was a determination that was reasonably open to the RAD to make based on the limited explanation provided by the Applicants. I do not see a basis to disturb the RAD's finding in these circumstances.

[17] The parties did not raise a question for certification and I agree none arises.

**JUDGMENT in IMM-7533-22**

**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-7533-22

**STYLE OF CAUSE:** CHUI LIN SUEN, WAI LIM v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** JUNE 1, 2023

**JUDGMENT AND REASONS:** SADREHASHEMI J.

**DATED:** DECEMBER 5, 2023

**APPEARANCES:**

Robert Gertler FOR THE APPLICANTS

Andrea Mauti FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Gertler Law Office FOR THE APPLICANTS  
Barrister and Solicitor  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario