Federal Court Cour fédérale

Date: 20240516

Docket: IMM-4411-23

Citation: 2024 FC 749

Toronto, Ontario, May 16, 2024

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

XIULI ZHANG
JIACHENG XU

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada (IRB). The RAD dismissed an appeal from a decision of the Refugee Protection Division (RPD), finding that the Applicants are not Convention refugees or persons in need of protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

[2] For the reasons that follow, I dismiss this application for judicial review. The RAD's decision, and the reasons that justify that decision, are reasonable.

I. BACKGROUND

[3] The Applicants, Xiuli Zhang and Jiacheng Xu, are citizens of China. They are mother and son. The Applicants claim to be at risk of persecution because the Principal Applicant, Xiuli Zhang, practices Falun Gong.

[4] According to the Principal Applicant, she was introduced to Falun Gong in China by a friend, who suggested the practice might help with her stomach pain. She joined an underground practice group in April 2019. On January 5, 2020, the Public Security Bureau (PSB) raided the group. The Principal Applicant was not apprehended, but she went into hiding. On January 20, 2020, the PSB issued a summons for her arrest. With the assistance of a smuggler, the Applicants left China for Canada on February 29, 2020.

[5] The RPD rejected their claim based on various adverse credibility findings. The Applicants appealed the RPD decision to the RAD. The RAD dismissed the Applicants' appeal, finding that the RPD had correctly denied their claim for refugee protection. This is the decision for which the Applicants seek judicial review.

II. THE RAD DECISION

[6] The RAD found that, despite some errors, the RPD was correct in finding that the Principal Appellant is not a genuine Falun Gong practitioner.

[7] The RAD first noted that the Principal Applicant provided inconsistent evidence about the PSB's pursuit of her in China. In the Schedule 12 form – one of the forms that commences a claim for refugee protection – the Principal Applicant indicated that neither she nor any of her family members had been sought, arrested, or detained by the authorities in her country. However, the Principal Applicant alleged in the narrative that accompanied her claim, and in oral testimony, that the PSB sought her arrest because of her illegal participation in the underground Falun Gong group while she was in China. The RAD concluded that the Applicant had a responsibility to provide consistent evidence and failed to do so.

[8] The RAD considered a summons allegedly issued for the Principal Applicant's arrest, as well as an arrest notice for the friend who introduced her to Falun Gong. In assessing these documents, the RAD came to the same conclusion as the RPD – namely, that both documents were not genuine. In arriving at this conclusion, the RAD agreed with the RPD's concerns and observed other irregularities in the arrest notice. While the only irregularity observed in the summons related to a misplaced comma, the RAD noted that this is a standard form document with a largely uniform appearance across China. This, combined with the RAD's concerns over the arrest notice, led it to conclude that the summons was not genuine.

[9] The RAD further concluded that the RPD had correctly pointed to inconsistencies in the Principal Applicant's testimony about her religious practice in Canada, which led to its finding that she was not a genuine Falun Gong practitioner. The Principal Applicant initially testified that her Falun Gong practice involved practicing the five exercises and occasionally reading Zhuan Falun. However, she later testified that she also sent righteous thoughts (an important Falun Gong practice) four times a day. The RAD found this to be a significant internal

inconsistency in the Principal Applicant's testimony. Moreover, the RAD rejected the notion that the RPD had failed to consider the Principal Applicant's level of education or had inappropriately quizzed her on her knowledge of religious doctrine.

[10] The RAD also agreed with the RPD's identification of inconsistencies in the Principal Applicant's testimony with respect to the frequency of her practice, the people she practiced with, and where she practiced. The RAD further noted in this regard that the Principal Applicant demonstrated "very little interest in cultivating her personal Falun Gong practice despite risking her life to flee China for the very purpose of being able to express her beliefs freely."

[11] Finally, the RAD concluded that there was no basis for a *sur place* claim. The RAD found that the Principal Applicant was not, and is not currently, a Falun Gong practitioner in Canada or in China. Furthermore, there was no evidence that she would practice Falun Gong in China or be perceived as doing so.

III. ISSUES

[12] The Applicant articulated one overarching issue on judicial review, namely whether the RAD erred in assessing the Principal Applicant's credibility as a Falun Gong practitioner.

IV. STANDARD OF REVIEW

[13] Although the Applicants did not make submissions on the standard of review, the Respondent argues that the appropriate standard when substantively reviewing a RAD decision is

reasonableness. I agree: *Alkarra v. Canada (Citizenship and Immigration)*, 2023 FC 1219, at paras 29–30; *Salim v. Canada (Citizenship and Immigration)*, 2023 FC 1059, at para 20.

[14] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision 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" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 85; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [*Mason*] at para 64). Reasonableness is a deferential, but robust, standard of review: *Vavilov* at paras 12-13. The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified: *Vavilov* at para 15.

[15] For a decision to be unreasonable, the Applicant must establish that the decision contains flaws that are sufficiently central or significant: *Vavilov* at para 100. Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances: *Vavilov* at para 125. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision: *Vavilov* at para 100.

V. SUBMISSIONS OF THE PARTIES

A. *Applicants' Position*

[16] The Applicants argue that the RAD erred in several aspects of its decision. They first argue the RAD erred in finding that the Principal Applicant's testimony was inconsistent with regard to her Falun Gong practice. They suggest the RAD misconstrued the questions asked of the Principal Applicant, which led it to wrongfully identify inconsistencies. In the alternative, the Applicants submit that the RAD did not take into account the Principal Applicant's limited education and lack of sophistication, which may have explained any difficulties she experienced with her testimony.

[17] The Applicants also argue that the RAD erred in finding contradictions in the support letters submitted by the Principal Applicant to corroborate her Falun Gong practice and in correspondingly giving no weight to these letters.

[18] As for the arrest notice, the Applicants argue that the RAD erred in comparing it to a sample in the objective evidence, as this sample was not precisely the same type of document as the one provided by the Principal Applicant. Furthermore, even if the two documents were of the same type, the Applicants argue that the RAD made "fatal errors" when comparing them. Firstly, the Applicant notes that the supposed inconsistencies are not in the adduced notice of arrest itself, but in the counterfoil to that notice, and there are therefore no inconsistencies between the notice of arrest and the sample document. The Applicant also notes that the RAD erred in stating that the arrest notice was missing a salutation line. Lastly, the Applicant notes that the RAD

erred in stating that the notice incorrectly refers to article 91 of the *Criminal Procedure Law* of the People's Republic of China instead of article 81. The sample notice contains no mention of article 81, and the arrest notice could have been issued under article 91.

[19] In addition, the Applicants note that the RAD found that the summons was fraudulent largely because the arrest notice was found to be fraudulent. If the RAD had not erred with respect to the arrest notice, they argue, it may have come to a different conclusion with respect to the genuineness of the summons.

[20] Finally, the Applicants argue that the RAD's *sur place* analysis was unsustainable, given that it was based on its other unreasonable findings.

B. *Respondent's Position*

[21] The Respondent first argues that the Applicant filed inconsistent evidence in her forms about whether or not the PSB were looking for her, a fact that is central to her risk allegation. The Respondent notes that, regardless of her level of sophistication, the Principal Applicant was represented by counsel who assisted with her BOC and other refugee intake forms. As such, it was not unreasonable for the RAD to observe that it was the Applicant's responsibility to provide consistent evidence.

[22] The Respondent further argues that the RAD's conclusions on the arrest notices and the summons were reasonable. The Respondent notes that the RAD reasonably considered the findings of the RPD and identified several further concerns.

[23] The Respondent also argues that the RAD reasonably concluded that the Applicant's testimony regarding her Falun Gong practice was inconsistent. The Respondent notes that the RAD identified several concerns with the Principal Applicant's testimony, and reasonably concluded that she was not a genuine practitioner of Falun Gong.

[24] Lastly, the Respondent argues that the RAD reasonably concluded, based on its other findings, that the Applicants do not have a *sur place* claim.

VI. ANALYSIS

A. *Credibility*

[25] Deference is owed to the RAD with respect to the assessment of credibility: *Singh v Canada*, 2023 FC 1106 at para 19; *Aldaher v Canada (Citizenship and Immigration)*, 2021 FC 1375, at para 23; *Sary v Canada (Citizenship and Immigration)*, 2016 FC 178, at para 23 [*Sary*]. As Justice Gascon noted in *Sary*, "credibility issues are one of the RAD's core competencies": *Sary*, at para 23.

(1) *Inconsistent Testimony*

[26] The RAD's findings with respect to inconsistencies in the Applicants' written evidence were reasonable. As noted above, the Applicants indicated in the Schedule 12 form that neither they, nor any of their family members, had ever been sought, arrested, or detained by the authorities in any country. This is plainly inconsistent with the Principal Applicant's claim that she was wanted by the PSB since the time of the raid on her Falun Gong group. While it is true

that she had indicated she was wanted by the PSB in other forms filed contemporaneously with the Schedule 12, this does not negate the inconsistency.

[27] It may be that the Principal Applicant inadvertently indicated that neither she, nor her family members had ever been sought in China. It may also be that the Principal Applicant did not understand the question asked of her on the Schedule 12 form. Nevertheless, I see no reviewable error in the RAD's reasoning on this point – the Principal Applicant, who was represented by counsel at the time she initiated her claim, provided internally inconsistent answers to questions of central importance to her refugee claim. In this context, it was open to the RPD to draw a negative inference, and it was therefore also open to the RAD to accord with the RPD's findings.

(2) *Supporting Documents*

[28] The RAD found that there were several concerns with the Principal Applicant's evidence and testimony, which undermined the credibility of her claim. While the Applicants point to some errors in the RAD's findings, I find that its conclusions on the documents were, on the whole, reasonable.

(a) *Arrest Notices*

[29] The RAD noted the RPD's concerns regarding the arrest notice not matching the sample notices in the objective evidence, and pointed to further inconsistencies. Specifically, the arrest notice does not include the Principal Applicant's friend's gender, age, time of arrest, or time that

the family member received the notice, and references article 91 instead of article 81 of the Chinese *Criminal Procedure Law*.

[30] In *Ma v Canada (Citizenship and Immigration)*, 2018 FC 163 [*Ma*], this Court warned against making determinative findings based on immaterial differences relating to "formatting and spacing, and not substantive content": at para 23. However, the RAD's concerns here are about more substantial elements of the arrest notice.

[31] The Applicants' first argument with respect to the arrest notice is that the RAD erred in comparing the document they had provided with the sample notices found in the National Documentation Package ("NDP") for China. I disagree. Whether the document provided by the Applicants was comparable to the sample contained in the NDP was a finding of fact. Aside from asserting that they are different documents, the Applicants have not put forward any further basis on which to conclude that the RAD erred in comparing them. This assertion alone cannot ground a finding that the RAD's approach was unreasonable.

[32] It is also important to note that the RAD acknowledged that the document submitted by the Applicants was significantly different from the samples contained in the NDP. This, in itself, was cause for concern, as the RAD noted that there was no objective evidence to indicate that any other templates for arrest notices exist outside of the samples provided. The RAD further noted that there have been no new forms for notices of detention and arrest since 2013, and these same forms are still in use. Finally, the RAD noted that the PSB has "very stringent guidelines for how these notices are written and printed. All arrest and detention notices issued by the PSB are uniformly printed by printing houses designated by provincial security organs." The above

findings were all rooted in the evidence. It may be that the evidence before the RAD was inaccurate, and other kinds of arrest notices are circulated in China. But the RAD can only draw conclusions from the record before it, and I see no reviewable errors in the RAD's appreciation of the above evidence.

[33] Next, the Applicant argues that the RAD erred in finding that certain expected details were not found in the arrest notice, because this information is typically found in the counterfoil to the document, rather than the document itself. Once again, I disagree. The RAD's findings in this regard were based on the information contained in an IRB Response to Information Request (RIR), Number CHN200762.E, 7, dated October 2021. This RIR contains information derived from multiple interviews on the format of Chinese notices of detention and arrest. This RIR also contains the sample documents referred to above. While it is true that some of the sample documents include a counterfoil, it is not immediately clear what information is contained in the counterfoil, and what information is contained in the document itself. Either way, it appears that the RAD's findings on the information missing from the documents were based on the written documentation in the RIR. The information contained in the RIR was sourced from an interview with a senior lecturer at the University of London, who conducts research on Chinese criminal justice reform. The RAD's findings were consistent with the information set out by the lecturer. This being the case, I cannot find that the RAD's reasons on the expected contents of the arrest notice were unreasonable.

[34] The same finding applies to the Applicant's argument that the RAD erred in finding that the arrest notice should have referenced article 81 of the Chinese *Criminal Procedure Law*, rather than article 91, which was cited on the arrest notice they submitted. Once again, the RAD

accurately referred to the evidence before it, namely that arrest warrants contain reference to article 81 of the *Criminal Procedure Law*. This being the case, I do not find it unreasonable that the RAD expressed concern with the arrest notice provided by the Applicants.

(b) *Summons*

[35] As noted above, the RAD affirmed the RPD's findings that a misplaced comma on the summons document raised concerns about its authenticity. The RAD acknowledged the difference of a comma may appear insignificant, but noted that it had also considered the discrepancy in light of the other discrepancies in the evidence. On the particular facts of this case, I find the RAD's conclusion to be reasonable. The summons in question was a standard pre-printed, fillable template. It was not unreasonable for the RAD to uphold a finding that inconsistent punctuation contained in the Applicants' summons called its authenticity into question. As Chief Justice Crampton recently found, it may well be in the smaller details that an inauthentic document may be revealed: *Jiang v Canada (Citizenship and Immigration)*, 2018 FC 1064, at para 31.

[36] I acknowledge that this Court, in cases such as *Ma*, has cautioned decision-makers against finding a document to be fraudulent based on formatting or spacing: *Ma* at para 32. In this case, however, the difference does not relate to formatting or spacing, but to the presence of punctuation that does not exist in the sample document.

[37] Finally, I observe that the RPD also raised concerns about the provenance of the arrest notice and the summons, because they had been sent to the Applicants in an envelope originating

in Hong Kong, rather than mainland China. The Principal Applicant did not appear to know precisely why these documents had come from Hong Kong, only that her mother had received assistance in sending them. The RAD noted that the Applicants did not address this concern on appeal, and the Applicants have similarly not raised this as an issue on judicial review.

[38] In light of the above, I find the RAD's treatment of the arrest notice and the summons to be reasonable. Had the RAD only relied on the minor discrepancy in the summons, its determination may well have been unreasonable. However, *Vavilov* requires reviewing courts to assess reasons holistically and contextually in order to understand the basis on which a decision was made: *Vavilov* at para 97*; Sharafeddin v. Canada (Citizenship and Immigration)*, 2022 FC 1269 at para 19. With this principle in mind, I find the RAD's reasons on this issue to be sufficiently intelligible, transparent, and justified and, as such, are reasonable.

(3) *The Applicant's Identity as a Falun Gong Practitioner*

[39] I also find that the RAD did not err in assessing the Principal Applicant's claimed identity as a Falun Gong practitioner.

[40] In *Song v Canada (Citizenship and Immigration)*, 2022 FC 250 at para 7, Justice Pentney recently set out a summary of the jurisprudence on permissible (and impermissible) forms of questioning on a refugee claimant's religious beliefs and practices, as follows:

> 1. In assessing whether a claimant's beliefs are genuine, a decision-maker is permitted to test this "with reference to the person's familiarity with the dogma or creed involved" *(Zhu v Canada (Citizenship and Immigration)*, 2008 FC 1066 at para 17).

> 2. It is open to a decision-maker "to disbelieve a claimant whose knowledge does not correspond to the duration and depth of [their] religious activities." *(Jia v Canada (Citizenship and Immigration)*, 2016 FC 33 at para 17; see also *Liang v Canada (Citizenship and Immigration)*, 2022 FC 115 at para 31, citing *Gao v Canada (Citizenship and Immigration)*, 2021 FC 271).
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> 3. When inquiring into a claimant's knowledge of the faith, it is important that the questioning not become a kind of religious "trivia quiz," and the focus must remain on the sincerity of the person's belief: *Qi v Canada (Citizenship and Immigration)*, 2020 FC 400 at para 19; see also *Wu v Canada (Citizenship and Immigration)*, 2021 FC 591 at para 19).

[41] In taking the above principles into consideration, and for the following reasons, I find the RAD's assessment of the Principal Applicant's testimony to be reasonable.

[42] First, I do not accept the Applicant's argument that the RAD failed to take into consideration the Principal Applicant's education. On the contrary, the RAD explicitly acknowledged the Principal Applicant's limited education, and that she was nervous while giving her testimony. This did not explain, however, the significant internal inconsistencies in the Principal Applicant's testimony.

[43] The RPD asked the Principal Applicant to describe the elements of her practice, and she initially testified that her Falun Gong practice involved practicing the five exercises and occasionally reading Zhuan Falun. However, she later testified that she also sent righteous thoughts four times a day. The RAD found this to be a significant internal inconsistency in the Principal Applicant's testimony. The Applicants argue that this was unreasonable, as the Principal Applicant had not been asked an open-ended question as to her practice, but had been asked how she practices at home. Once again, I disagree. The Principal Applicant testified that

she mostly practices at home and alone. In context, then, the RPD Member's question regarding her practice was an open-ended question that flowed from the Principal Applicant's testimony. In these circumstances, it was open to the RAD to find that the Principal Applicant's failure to mention an important part of her daily practice to be of concern.

[44] Further, the RAD did not base this finding on the Applicant's knowledge of doctrine alone; the Member also considered the Applicant's evidence about her personal interest in Falun Gong and the frequency of her practice.

[45] The RAD also considered letters from two Falun Gong practitioners, JY and YZ. The letters indicated that they met the Principal Applicant in March 2020 and they contain the following identical sentence: "after that, we have practiced, learned Fa and shared experiences together on the weekends." However, in the Principal Applicant's testimony, she noted that she practised with JY, but not YZ. When asked about this discrepancy, the Principal Applicant stated that she had initially practiced with YZ but had not done so recently. The Applicants argue that the RAD failed to consider this explanation. Once more, I disagree. While the RAD did not refer to the specific explanation provided by the Principal Applicant, it did consider at some length the nature of her testimonial inconsistencies, and considered whether she had provided an adequate explanation for them. I do not see any unreasonable conclusions in this aspect of the RAD's analysis.

B. *Sur Place* Claim

[46] Based on the above, I find that it was reasonable for the RAD to conclude that the Applicants did not have a *sur place* claim for refugee protection. The RAD found that the Principal Appellant was not a genuine Falun Gong practitioner in Canada or in China. It further noted that the Principal Appellant bore the burden to establish that she would practice Falun Gong if she returned to China, or that she would be perceived to be a Falun Gong practitioner if she returned to China.

[47] Based on its other findings, which I have found to be reasonable, it was also reasonable for the RAD to conclude that the Principal Appellant had not met this burden, and would not come to the attention of Chinese authorities: S*u v Canada* (*Citizenship and Immigration)*, 2022 FC 731 at para 40; see also *Zhang v Canada (Citizenship and Immigration),* 2016 FC 765 at paras 27–30.

VII. CONCLUSION

[48] For the foregoing reasons, this application for judicial review will be dismissed. The parties have not suggested any question of general importance for certification and none arise from this case.

JUDGMENT in IMM-4411-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question is certified for appeal.

"Angus G. Grant"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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