Federal Court Cour fédérale

Date: 20240702

Docket: IMM-2655-23

Citation: 2024 FC 1011

Ottawa, Ontario, July 2, 2024

PRESENT: Mr. Justice Pentney

BETWEEN:

JIAN HUANG
(a.k.a. JIM WONG)

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Jian Huang (also known as Jim Wong) is a citizen of China, who came to Canada using a false identity and a fake Guatemalan passport. The background to his case has been described in detail in two recent decisions, and will not be repeated here: 2023 FC 1491 and 2024 FC 862.

[2] The Applicant seeks judicial review of the decision of the Immigration Division ("ID"), which granted some of the requested changes to his conditions of release from detention. The Applicant challenges the ID's refusal to grant all of the changes he sought.

[3] The facts relevant to this judicial review include the following. In 2012, an arrest warrant for the Applicant was issued based on allegations made by the Chinese government that he had committed certain financial crimes in China. He was not arrested until February 2018. The Applicant remained in detention until October 2018, when he was released on conditions.

[4] The Applicant's detention and subsequent release conditions were based on an assessment that there was a risk that he would not appear for proceedings examining whether he was inadmissible to Canada based on serious criminality. The release conditions required, among other things, that the Applicant live under 24-hour house arrest, use two electronic monitoring bracelets, and that he hire and pay for a private security company to monitor his compliance with the release conditions. He was also prohibited from using a cellular telephone or other device with internet access.

[5] Following four years of compliance with the terms of his release, the Applicant applied for changes to relax the stringency of certain of the terms. Specifically, he requested the following:

1. Changing the terms and conditions by noting the change in his address (because the Applicant has been asked to move by his landlord);
2. Changing condition 9 by allowing the Applicant to leave his home unaccompanied, between 6 a.m. and 10 p.m. , upon prior notification to CBSA (condition 9 previously only allowed him to leave his home when granted permission for the purpose of attending medical, legal, and immigration meetings);
3. Deleting conditions 10 (being accompanied on approved outings by bondsperson or security), 11 (being accompanied during medical emergencies), and 14 (prohibition on the use of a cellular phone or device that can access the internet);
4. Removing the requirement for monitoring by a security guard at the Applicant's residence.

[6] The Minister opposed the Applicant's request, arguing that his flight risk had not diminished and that the current conditions have mitigated his flight risk. The Minister submitted that the Applicant's flight risk increased as his legal proceedings continue and he moves closer to possible removal.

[7] In its decision, the ID agreed to several of the Applicant's requested changes and relaxed the conditions of his release. This was based on the ID's determination that while the Applicant remained a flight risk, his release conditions could be modified in light of his years of compliance as well as the burden of these restrictions imposed on him and his family.

[8] The ID changed to the Applicant's release conditions to allow him to leave his residence unescorted if he provides 48-hours notice to the Canada Border Services Agency indicating where and when he planned to travel. Such travel had to be within the Metro Vancouver Regional District, and could not be to a location where the electronic monitoring device would not work (such as an underground parking garage). The ID also granted the Applicant's request to be permitted to carry a cell phone, but required that it not have internet access and that the Applicant turn over call and text logs to the CBSA on request. The Applicant was required to answer either his land-line or cellular phone between 8 a.m. and 4 p.m. each day. His curfew was modified so that he had to be at his residence between the hours of 10 p.m. and 6 a.m. Other minor amendments were made to ensure the various conditions remained consistent and coherent.

[9] However, the ID refused to make all of the changes requested by the Applicant. In particular, it refused to grant him access to devices that can access the internet, or to release him from the obligation to hire and pay for a private security company.

[10] The Applicant challenges the ID's refusal to grant all of the amendments he requested.

[11] The determinative issue in this case is whether the ID’s interpretation and application of the decision in *Canada (Citizenship and Immigration) v Li*, 2009 FCA 85 [*Li*] was reasonable. This flows from the following statement in the ID’s decision:

> [35] I find that the principles enumerated in *Li* that this Division ought not to engage in speculation about future proceedings are applicable to the circumstances before me. I find it is speculative to consider any potential outcome of the Applicant’s ongoing judicial reviews and what processes the Applicant may undertake, or what may be available to him, following the Federal Court’s decisions. For now, it is uncertain whether the Court will allow or dismiss either judicial review, or whether Mr. Huang is eligible to apply for a pre-removal risk assessment, or if a redetermination of his refugee appeal or admissibility decision are ordered by the Court. After considering the Court of Appeal's guidance in *Li*, I find that the determination of these two judicial reviews is the only timeline that is reasonable for me to consider with regards to how long conditions of release may be imposed.

[12] In considering the Applicant’s request to vary the conditions of release, the ID was required to assess the likely length of future detention: section 248, *Immigration and Refugee Protection Regulations*, SOR/2002-227. In this context, that included restrictions on his liberty imposed by restrictive conditions, as well as the possibility that he could be returned to detention for breaching these conditions. These are meaningful deprivations of the Applicant’s liberty: *Wang v Canada*, 2018 ONCA 798 at para 28.

[13] The Applicant had argued that in predicting the likely length of time he would remain under conditions, the ID had to consider both the time it would take to resolve the existing judicial review applications as well as the additional time that would be involved in an

assessment of his risk of return. The Refugee Protection Division and Refugee Appeal Division [RAD] had not assessed his risk because they found that he was not eligible for refugee protection. The Applicant was pursuing a judicial review of the RAD decision, and argued that depending on the outcome of that proceeding, he would either seek to have the RAD assess his risks, or pursue a Pre-Removal Risk Assessment ("PRRA"). Either way, according to the Applicant, his time under conditions would be extended beyond the resolution of his judicial reviews.

[14] In the passage set out above, the ID found that it should not include the additional time for a RAD redetermination or a PRRA in its assessment of the likely period the Applicant would remain under restrictive conditions. In doing so, it relied on "the principles enumerated in *Li* that this Division ought not to engage in speculation about future proceedings…" The question is whether this is a reasonable interpretation of the *Li* decision.

[15] The Applicant argues that the ID mis-interpreted *Li*, and points to other decisions that he says support a more flexible approach: *Wang v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 79, and 2015 FC 720. The Respondent argues that the ID faithfully followed the Federal Court of Appeal's guidance, pointing to the answer to the certified question in *Li*, which states (at para 81): "I have concluded that the basis of the estimation of the future length of detention should be the proceedings as they exist at the time of each monthly review and not on an anticipation of available processes but not yet underway."

[16] I find the ID’s interpretation and application of the *Li* decision is questionable because it did not consider the different legal and factual contexts as between the two cases, nor explain how the specific determination in *Li* applied here despite these differences.

[17] As is clear from the extract cited above, the *Li* decision dealt with an individual who was in detention, and therefore subject to a legal regime that required monthly detention reviews. In that context, the Federal Court of Appeal noted that rather than speculating about future possible legal proceedings, the decision-maker should have recognized that relevant changes in the claimant’s circumstances – including the launch of possible future legal proceedings – could be considered at each subsequent review.

[18] In contrast, the Applicant has been released under conditions, and there is no legal requirement that his conditions be reviewed on a regular basis. Instead, it is up to the parties to determine whether or when to seek a review of the conditions. Some change in circumstances or new development would be a logical basis to seek such a review, and this could include the individual’s compliance with conditions and the simple passage of time: *Tursunbayev* v *Canada (Public Safety and Emergency Preparedness)*, 2014 FC 5 at para 30. The main point is that the timing of any review is not fixed in law, and there could be a lengthy period between applications by one party or the other.

[19] An additional factor in this case is that the Applicant indicated that if he did not succeed in overturning the RAD's inadmissibility decision, he would seek a PRRA. However, he contends that it was not open to him to initiate a PRRA before he received an invitation from the Canada Border Services Agency, and so the timing of that step was not within his control. This highlights the contrast between the Applicant's situation and that which prevailed in the *Li* case, where the timing of detention reviews were fixed by law.

[20] Despite my misgivings about the ID's interpretation of the *Li* decision, two things remain true. First, the ID was not wrong to take inspiration from the Federal Court of Appeal's general reluctance to sanction an approach to predicting the length of likely detention based on speculation about legal possibilities rather than estimations rooted in facts. On that score I can find no basis to fault the ID's general approach. However, I accept the Applicant's submission that based on what had transpired up to the time of the ID hearing, it was reasonable for the ID to accept that he would pursue a risk assessment because that was an additional step that could result in him staying in Canada rather than being returned to China. The ID did not engage in any discussion of this, given its interpretation of the *Li* decision.

[21] Of greater significance, in my view, is that even if I accept that the ID's interpretation of the *Li* decision was unreasonable, the Applicant has not persuaded me that this is a sufficiently significant error to undermine the entire decision. The fact is that the Applicant was successful in having the conditions of his release relaxed, in part based on his years of compliance and

because the IDs accepted that the restrictions had taken a toll on him and his family. However, the ID found that he remained a flight risk, and that restrictive conditions continued to be appropriate.

[22] The Applicant has not demonstrated whether or how the ID's assessment of the remaining conditions would have been different had it added extra time based on the possibility that he would seek a PRRA. The ID assessed his general flight risk, based on his prior history of coming to Canada and then gaining permanent residence using a false identity and fake documents he obtained and paid for. There is no indication that this risk was likely to diminish with time.

[23] The Applicant did not seek to demonstrate that the cost of paying for private security imposed an undue financial burden on him, or that an additional period of time would make the burden intolerable. The ID's assessment of the risks posed by giving him access to the internet was not particularly time-dependent. The same can be said for the requirement that he provide notice to the CBSA when he left his residence for unescorted absences, and the night-time curfew that was imposed.

[24] I am not persuaded that any error by the ID in its interpretation of the *Li* decision – and its resultant refusal to add further time to his anticipated period under restrictive conditions – is

the type of shortcoming or flaw that is "sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100).

[25] The Applicant submitted that if the ID's finding on the *Li* decision was not reversed, he would be hampered in any future application to review his conditions of release because the ID would limit itself to consideration of existing proceedings rather than foreseeable future steps. The fact that he does not control the timing of a future PRRA looms even larger in this context, because until the CBSA invites him to submit a PRRA, he will be in "limbo" – unable to persuade the ID that the length of time under conditions was becoming unduly burdensome and disproportionate to the immigration risk.

[26] I am not persuaded. I have set out my misgivings about the ID's interpretation of the *Li* decision above, and any future examination of the question will have to take this into account.

[27] Furthermore, it is not clear why the Applicant cannot simply submit a PRRA application, whether or not he is invited to do so. In the circumstances of this case, in examining any future request to modify the conditions of release, the ID would have to consider any relevant change in circumstances. As of today, this obviously includes the legal situation following the dismissal of the Applicant's two judicial review applications. It could also include any other steps he has taken to seek to have his risks of return examined, including either pressing for an early

opportunity for a PRRA or actually submitting one. Based on this, I do not accept that the Applicant will be left in a legal limbo by virtue of this decision.

[28] For the reasons set out above, I am not persuaded that the ID's decision is unreasonable. The application for judicial review will therefore be dismissed.

[29] There is no question of general importance for certification.

JUDGMENT in IMM-2655-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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