

Federal Court



Cour fédérale

Date: 20240806

Docket: IMM-3746-23

Citation: 2024 FC 1231

Toronto, Ontario, August 6, 2024

PRESENT: Madam Justice Go

BETWEEN:

TO HUY PHAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] To Huy Phan [Applicant], a citizen of Vietnam, seeks judicial review of a decision made by the Refugee Appeal Division [RAD] confirming the determination of the Refugee Protection Division [RPD] that he is neither a Convention refugee nor a person in need of protection [Decision].

[2] The Applicant alleges that he risks persecution in Vietnam as a practising Hoa Hao Buddhist who belongs to an unregistered sect of the religion. The Applicant came to Canada in February 2019 and filed a refugee claim in December 2020.

[3] The RPD found that the Applicant is not a genuine Hoa Hao Buddhist, and that the Applicant's delay in claiming protection undermined the Applicant's credibility. While the RAD determined that the RPD erred in finding the Applicant is not a genuine Hoa Hao Buddhist, the RAD concluded that the Applicant has not credibly established he cannot freely practice his faith in Vietnam.

[4] The hearing of this judicial review application was held on March 21, 2024 before a judge who has since retired from the Court. By Order of the Chief Justice dated June 24, 2024, the application was reassigned to a different judge. The parties agreed that the application would be determined based on the written record and audio recording of the hearing.

[5] For the reasons set out below, I find the Decision reasonable and I dismiss the application.

II. Analysis

[6] The issue before me is whether the Decision was reasonable. The appropriate standard of review is set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

[7] The Applicant raises two issues, namely:

- a. Whether the RAD erred in finding that the Applicant's delay in claiming protection undermined the credibility of his allegation that he left Vietnam out of fear and a desire to practice Hoa Hao; and
- b. Whether the RAD erred in finding that the Applicant can practice his faith freely without risk of persecution in Vietnam.

[8] While the Applicant did not argue the first issue at length at the hearing before the Court, I will address both issues in my analysis.

A. *The RAD did not err in its assessment of the Applicant's delay in making his claim*

[9] In his submissions to the RAD, the Applicant explained his delay for making a refugee claim in Canada. The Applicant stated that he traveled to four countries in Asia and inquired about immigration in each country. A lawyer in Japan told the Applicant he could not stay there. After arriving in Canada, the Applicant asked people in the Vietnamese community and was advised he had no options. Moreover, he faced a language barrier in Canada, making it difficult for him to seek appropriate advice.

[10] The RAD did not accept the Applicant's explanation, citing several reasons:

- The Applicant is university-educated and has demonstrated his ability to use the internet; the Applicant could have found out about the Canadian refugee program by a simple internet search but did not do so;
- The Applicant made no effort of making himself aware of the asylum program in Canada. It was not credible that he would not do so given his fear of return to Vietnam and given that he came to Canada so that he could stay here permanently to practice his faith; and
- The Applicant indicated in his visitor visa application for Canada that he could communicate in English.

[11] The Applicant argues that the RAD's finding was unreasonable for three reasons. First, the RAD erred by assuming that the Applicant could communicate in English without an oral hearing and by making a leap in assuming that the Applicant's command of English was strong enough to engage in immigration law research. Second, the RAD failed to consider relevant evidence, including the advice he received that he had no immigration options. Third, the RAD made implausibility findings contrary to the jurisprudence that such findings can only be made in the clearest of cases.

[12] I do not find the RAD made findings of implausibility. Not all findings of credibility amount to findings of implausibility, including credibility findings based on the delay in filing a claim: *Noellien v Canada (Citizenship and Immigration)*, 2018 FC 1010 at para 23 and *Waseem v Canada (Citizenship and Immigration)*, 2021 FC 1422 at para 24.

[13] Further, the RAD gave reasons for rejecting the Applicant's explanations. These reasons were based on the evidence provided by the Applicant. The Applicant's disagreement with the RAD's assessment of the evidence does not give rise to any reviewable error.

[14] The Applicant makes other arguments based on the history of the Vietnamese Canadian community in Canada. I need not consider these arguments since they were not grounded on any evidence in the record before the RAD.

B. *The RAD's finding that the Applicant can practice his faith without risk of persecution was reasonable*

[15] The Applicant's main argument is that the RAD erred by finding that he can practice his faith freely in Vietnam without fear of persecution. In so finding, the Applicant submits the RAD erred in its assessment of country conditions. Specifically, the Applicant argues the RAD committed four errors.

[16] First, the RAD erred by not agreeing with the Applicant that there is generally no freedom of religion in Vietnam. Pointing to the National Documentation Package [NDP] for Vietnam, the Applicant argues that despite a constitution that allows for religious freedom, there is strict monitoring of religion; that many religious practices are banned; and that citizens are being persecuted due to their religious activities or beliefs. In particular, the Applicant cites the U.S. Commission on International Religious Freedom report of July 2022 which noted that the government of Vietnam continued to enforce law on religion that contravened international human rights standards.

[17] I reject this argument. The Decision reveals that the RAD considered the relevant country conditions evidence, including the evidence that the Applicant relied on, in arriving at its conclusion. The RAD acknowledged the definition of official discrimination cited by the Applicant and noted evidence of Hoa Hao practitioners being harassed by authorities. However, the RAD also referred other parts of the evidence that suggests Hoa Hao practitioners can practice their religion "with minimal inference [*sic*] from the authorities." The RAD further considered the restrictions that some unregistered groups may face, but found they do not apply

in the Applicant's case. Specifically, the RAD noted that the objective evidence suggests authorities are unlikely to have interests in individuals who practice Hoa Hao at home or in small groups and do not have any political activist profile. In sum, the RAD reasonably assessed the country conditions evidence and reached a conclusion based on the evidence before it. The Applicant's disagreement with the RAD's assessment of the objective evidence does not make the assessment unreasonable.

[18] Second, in stating that a Hoa Hao Buddhist can practice safely in Vietnam if he does so at home and in small groups, the Applicant submits the RAD is asking the Applicant to alter his practice to meet the limitations on his freedom imposed by the state. The Applicant argues that the RAD failed to consider objective evidence establishing that Hoa Hao practitioners are subject to surveillance and their private groups and public gatherings often result in arrests.

[19] I find this argument has no merit for two reasons. First, as the Applicant himself stated in his Basis of Claim [BOC] that he normally practiced at home while in Vietnam, and he sometimes practiced with a group of about 10 people. Both in his BOC and in his testimony before the RPD, the Applicant did not assert that he was politically active. Nor did the Applicant clarify what practices he would have to give up to avoid persecution. Second, the Applicant's argument reflects his disagreement with the RAD's assessment of the objective evidence, which I have already found to be reasonable. In light of the evidence about the Applicant's own practice and the objective country evidence, the RAD's conclusion that a person in the Applicant's circumstances could, on a balance of probabilities, practice his religion freely in Vietnam, was reasonable.

[20] Third, the Applicant submits that the RAD erred by finding that only politically active Hoa Hao practitioners would be at risk of persecution. This argument is an extension of the Applicant's contention around the moderate risk of "official discrimination" that Hoa Hao Buddhists like the Applicant may face. Once again, the RAD did consider the Applicants' submission in this regard and provided its reasons for rejecting it. I see no basis to interfere.

[21] Finally, the Applicant argues the RAD erred by finding the Applicant may avoid persecution by "co-operating with state officials."

[22] With respect, the Applicant's argument takes the RAD's finding out of context. The RAD made its remark about "co-operating with state officials" during its review of the objective evidence. As noted above, the RAD also considered other evidence including the evidence the Applicant cited. Ultimately, the RAD concluded that "individuals who practice Hoa Hao at home or in small groups and do not have any political or activist profiles" are unlikely to attract authorities' interests. In so finding, the RAD did not suggest that the Applicant should avoid persecution by co-operating with the state.

III. Conclusion

[23] The application for judicial review is dismissed.

[24] There is no question for certification.

JUDGMENT in IMM-3746-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3746-23

STYLE OF CAUSE: TO HUY PHAN v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 21, 2024

JUDGMENT AND REASONS: GO J.

DATED: AUGUST 6, 2024

APPEARANCES:

Phillip Trotter FOR THE APPLICANT

Charles J. Jubenville FOR THE RESPONDENT

SOLICITORS OF RECORD:

Phil Trotter Lawyer Services FOR THE APPLICANT
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario