Federal Court  Cour fédérale

Date: 20240812

Docket: IMM-1807-23

Citation: 2024 FC 1253

Ottawa, Ontario, August 12, 2024

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

XIN LI YUAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Xin Yu Lan, seeks judicial review of a decision by a Senior Immigration Officer (the "Officer") dated March 23, 2022, denying the Applicant's Pre-Removal Risk Assessment ("PRRA") application. The Officer was not satisfied the Applicant was a Convention refugee or a person in need of protection pursuant to sections 96 and 97, respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[2] The Applicant submits that the Officer's decision is unreasonable for its treatment of the evidence and the standard it required to establish religious persecution. The Applicant also submits that the Officer breached procedural fairness by failing to convoke an oral hearing.

[3] For the following reasons, I find that the decision is reasonable and was rendered in a procedurally fair manner. This application for judicial review is dismissed.

II. **Analysis**

A. *Background*

[4] The Applicant is a 51-year-old Chinese citizen. He arrived in Canada in 2009 and was granted refugee status in 2011 owing to religious persecution. In 2012, he obtained permanent residence. In 2013, his wife and child came to Canada and became permanent residents.

[5] Between 2013 and 2020, various proceedings occurred to cessate the Applicant's refugee status.

[6] Following the Applicant obtaining permanent residence in Canada, he applied for a Chinese passport. In 2013, he travelled to China to attend his mother's funeral. In October 2013, the Minister initiated cessation proceedings. On June 13, 2014, the Refugee Protection Division ("RPD") granted the Minister's application, cessated the Applicant's refugee status, and revoked his permanent residence in Canada. The Applicant filed for judicial review of the RPD's decision, which was granted, and the matter remitted for redetermination.

[7] In 2020, the Minister's application was once more allowed by the RPD and the Applicant's status once more cessated. The RPD concluded that the Applicant's "procurement of a Chinese passport and subsequent return to China negates his testimony about fear of persecution in his country." The RPD found that the Applicant did not have any issues with Chinese authorities in his travel to China and that the Applicant no longer needed protection in Canada.

[8] In 2021, the Applicant was notified that he could submit a PRRA application.

[9] In a decision dated March 23, 2022, the Officer found that the Applicant was not an individual described in sections 96 or 97 of the *IRPA*. The focus of the Officer's decision was on whether the Applicant was at risk of religious persecution as a Christian in China.

[10] The Officer began by acknowledging a letter written by the Applicant's cousin, but assigned little value to this letter given that it was unsworn and provided few details about the alleged visit by the Chinese authorities at the cousin's home. The Officer further assigned no value to the cousin's statement that the Applicant's father could not write a letter to confirm this visit owing to the father's health conditions, as this statement was "largely hearsay."

[11] The Officer acknowledged a cremation record of the Applicant's mother, but found it was irrelevant to the assessment of the Applicant's current risk in China. The Officer also acknowledged a letter from the Applicant's church, but found it did not provide sufficient detail about the Applicant's experiences in China nor conditions in China for Christians. The Officer

also noted that his letter bore an incorrect baptism date and assigned it minimal weight. The Officer overall concluded that there was insufficient evidence to establish that the Chinese authorities sought out the Applicant when he visited China in 2013 or that the authorities were currently interested in the Applicant.

[12] Turning to country condition evidence, the Officer acknowledged a report noting that "Christianity is often seen as anti-China, and that religious groups which have typically fallen into the grey market, are facing increasing scrutiny from the government." The Officer acknowledged other reports speaking to persecution of Christians in China, especially with reference to the regulations passed in 2018 ("2018 Regulations") and the Chinese government's Sinicization of Christian churches in China.

[13] The Officer also acknowledged a report from the UK Home Office stating that despite intensifying restrictions on Christians, "the situation for most Christians in China has not changed significantly, with the risk of treatment amounting to persecution for expressing and living their faith still being very low." The Officer agreed with this conclusion, finding that the conditions had not changed significantly since the Applicant's last visit in 2013 such that the Applicant faced a new risk in China. The Officer found that treatment of Christians in China varied widely, that the Chinese authorities primarily sought out higher-ranked church members, and that the situation was more problematic for those in urban, rather than rural, areas.

[14] The Officer overall concluded that while "conditions are highly restrictive," the conditions did not rise to persecution or risk to the Applicant such that he was a Convention refugee or person in need of protection pursuant to sections 96 and 97 of the *IRPA*.

B. *Preliminary Issue*

[15] The Respondent objected to the Applicant's requested anonymity order in this matter, a request made in a notice dated March 10, 2023.

[16] I agree with the Respondent that this is not a circumstance warranting such an order.

[17] This Court, like other Canadian courts, adheres to a principle that courts proceedings are open to the public (see *Adeleye v Canada (Citizenship and Immigration)*, 2020 FC 681 ("*Adeleye*") at para 6; *Federal Courts Rules*, SOR/98-106, rr 26, 29). This principle is constitutionally protected (*Adeleye* at para 6, citing *Edmonton Journal v Alberta (Attorney General)*, 1989 CanLII 20 (SCC), [1989] 2 SCR 1326).

[18] Section 8.1 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 ("*FCCIRPR*") provides conditions for this Court to grant an anonymity order for this application under the *IRPA* (*FCCIRPR*, r 3). Subsection 8.1(5) provides that "[t]he Court may make an order under subrule (1) if, after taking the public interest in open and accessible court proceedings into account, the Court is satisfied that the party's identity should be made anonymous."

[19] The Applicant sought this exception to the open court principle. Taking into account the public interest in open and accessible court proceedings, I am not satisfied that the Applicant's identity should be made anonymous. On the one hand are the statutory and constitutional prescriptions noted above; on the other is the Applicant seeking judicial review of a decision denying that he faced persecution at the hands of the Chinese authorities. I note that the Applicant is requesting this anonymity order only now, despite years of proceedings in Canada where his name and information has not been anonymized, and despite the Applicant applying for and receiving a Chinese passport from Chinese officials and travelling to and from China.

[20] In my view, the Applicant's interests in an anonymity order do not outweigh the interests in having open court proceedings. I agree with the Respondent that acceding to the Applicant's request would be the Court tacitly accepting that the Applicant is at risk of persecution from the Chinese authorities and thereby accepting that the Officer unreasonably found that the Applicant was not. It would be inappropriate to prejudge this issue in this application by granting the anonymity order, and would set a precedent where any refugee claimant coming to this Court could request an anonymity order based on their allegations of persecution. For these reasons, I do not grant an anonymity order under subsection 8.1(1) of the *FCCIRPR*.

C. *Issues and Standards of Review*

[21] The issues raised in this application are whether the Officer's decision is reasonable and was rendered in a procedurally fair manner.

[22] The parties agree the applicable standard of review for the merits of the Officer's decision is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 25, 86-87 ("*Vavilov*")). I agree.

[23] The issue of procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 ("*Canadian Pacific Railway Company*") at paras 37-56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). I find that this conclusion accords with the Supreme Court of Canada's decision in *Vavilov* (at paras 16-17).

[24] 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). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[25] For a decision to be unreasonable, the applicant must establish 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, or a "minor misstep" (*Vavilov* at para 100).

[26] Correctness, by contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paragraphs 21-28 (*Canadian Pacific Railway Company* at para 54).

D. *There has not been a breach of procedural fairness*

[27] The Applicant submits that the Officer failed to convoke an oral hearing in making veiled credibility findings about the Applicant's cousin's letter and the Applicant's affidavit with respect to the Chinese authorities seeking the Applicant out in China, thereby breaching procedural fairness.

[28] The Respondent submits that the Officer was concerned with the sufficiency of the Applicant's evidence, rather than its credibility, there being no breach of procedural fairness.

[29] I agree with the Respondent. I do not find that the Officer made veiled credibility findings. I have recently held that PRRA officers err when they "fail to provide reasons to reject the presumed truthfulness of evidence in an applicant's sworn affidavit in PRRA applications" (*Alabi v Canada (Citizenship and Immigration)*, 2024 FC 475 at para 19 [citations omitted]). I

have also held that "it is when otherwise credible and admitted evidence raises a serious issue with respect to the general credibility of the applicant that the determination of an oral hearing becomes relevant. A 'credibility finding' on the admissibility of new evidence is not equivalent to a credibility assessment on the Applicants" (*AB v Canada (Citizenship and Immigration)*, 2020 FC 61 at para 17).

[30] The Officer here provided reasons to reject the evidence in the Applicant's affidavit, including that the cousin's letter did not contain details about the Chinese authorities allegedly seeking out the Applicant at his mother's funeral and that the cousin's statement on behalf of the Applicant's father was hearsay. The Applicant's affidavit states that the Applicant's uncle told the Applicant's father that Chinese authorities sought out the Applicant at his mother's funeral. The Officer never doubted this piece of evidence *per se*; rather, as noted above, the Officer was concerned with the contents of the corroborating evidence, and provided reasons for discounting the corroboration (*i.e.*, the cousin's letter). Additionally, were the Officer's reasons credibility findings about this evidence, I do not find they would be equivalent to a credibility assessment of the Applicant himself.

[31] The Officer therefore did not err in finding the Applicant's evidence to be insufficient to establish that the Chinese authorities had sought him out, and not convoking an oral hearing. In my colleague Justice Diner's words, "[u]ltimately, if simply reaching a result that conflicts with an applicant's declared belief of persecution constitutes a credibility finding, then every denied PRRA would call for an oral hearing" (*Bahar v Canada (Citizenship and Immigration)*, 2019 FC 1640 at para 12).

E. *The decision is reasonable*

[32] The Applicant submits that the Officer's treatment of the evidence rendered the decision unreasonable. The Applicant largely relies on the submission that the Officer erroneously relied on *QH v The Secretary of State for the Home Department*, [2014] UKUT 86 (IAC) ("*QH*"), a decision from the United Kingdom Upper Tribunal (Immigration and Asylum Chamber) that was cited in a report that the Officer relied upon in the decision. The Applicant further submits that the Officer made no mention of evidence establishing that Christian churchgoers were being arrested in his home province of Henan and failed to grapple with evidence of increased persecution of Christians in light of the 2018 Regulations. Moreover, the Applicant submits that that the Officer's analysis of religious persecution commits the reviewable error of restricting the analysis as to whether the Applicant would be arrested and incarcerated.

[33] The Respondent submits that the decision is reasonable. The Respondent submits that the Applicant has misapprehended *QH*, failed to account for the Officer's finding that the evidence did not establish that the Chinese authorities were seeking out the Applicant, and has overall mischaracterized the Officer's treatment of the evidence of persecution in China with respect to Christians. The Respondent further submits that the Officer did not restrict the persecution analysis to whether the Applicant would be arrested and incarcerated, the Officer explicitly stating that most Christians are able to openly practice their religion in China. The Respondent submits that the Applicant relies on non-binding Refugee Appeal Division ("RAD") decisions in support of his finding, as well as distinguishable decisions from this Court.

[34] I agree with the Respondent. The Applicant's arguments amount to impermissibly asking this Court to reweigh the evidence and decide, for itself, the issues before the Officer (*Vavilov* at paras 83, 125).

[35] The Applicant's reading of *QH* is that a Christian in China may face persecution if they have attracted local authorities' attention. The Applicant submits that he has already attracted the attention of authorities. For the Applicant, the Officer therefore erred in failing to mention this evidence from *QH* and finding that the Applicant would thus be at risk of persecution.

[36] First, the passage from *QH* that the Applicant relies on states that there "may" be an increased risk of persecution to Chinese Christians who have attracted the attention of authorities. The Officer noted the evidence in the decision that "certain individual Christians who worship in unregistered churches and who conduct themselves in such a way as to attract the local authorities' attention to them or their political, social or cultural views may face an increased risk of adverse state interest" [emphasis added]. Again, the Applicant is simply requesting that the Court reweigh the evidence in his favour and find that there he faces a risk of persecution in China. The Court will not do this.

[37] Second, the Applicant is assuming he is of interest to the Chinese authorities. I am cognizant that he previously obtained refugee protection in Canada owing to persecution in China. However, per above, I find that the Officer did not err in finding the Applicant's evidence to be insufficient to establish that Chinese authorities were pursuing him. The Officer was reasonably concerned with the lack of corroboration in this evidence, and finding otherwise

would require determining whether this evidence was sufficient for the Applicant's claim; in other words, it would require that the Court reweigh this evidence. This is not permitted on reasonableness review (*Vavilov* at para 125).

[38] Moreover, the Applicant's argument that the Officer did not consider evidence of adverse country conditions with respect to the province of Henan fails to account for the presumption that the Officer considered all of the evidence (*Ruszo v Canada (Citizenship and Immigration)*, 2018 FC 943 ("*Ruszo*") at para 34, citing *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) (QL) at para 1). Indeed, the reasons disclose that the Officer was attuned to the fact that Christians are treated differently across different regions of China. While it perhaps would have been preferable to focus on Henan in particular, decision-makers do not have to make an explicit finding on each argument raised, nor do their reasons have to be perfect (*Vavilov* at paras 91, 128). In this application, I find that the Officer meaningfully accounted for the arguments that the Applicant raised in his application with respect to his alleged treatment in China (*Vavilov* at para 128).

[39] Furthermore, I do not find that the Officer engaged in a "selective" analysis with respect to evidence of the 2018 Regulations. In my view, the decision shows that the Officer was well aware of the 2018 Regulations and its effect on Chinese Christians, noting the "highly restrictive" conditions in China. The Officer concluded, based on both the country condition evidence and the finding that the Applicant had not faced issues with Chinese authorities, that the Applicant did not face a risk of persecution. Again, the Applicant does not account for the presumption that the Officer considered all of the evidence and is simply requesting that the

Court reweigh the evidence (*Ruszo* at para 34; *Vavilov* at para 125). I find that the Applicant has failed to show that the Officer "fundamentally misapprehended" the evidence of the 2018 Regulations, or other evidence of conditions in China, such that the decision is unreasonable (*Vavilov* at paras 100, 126).

[40] Finally, I do not find that the Officer restricted the persecution analysis to whether the Applicant would be arrested and incarcerated. The Applicant is simply cherry-picking portions of the evidence that the Officer relied on that state that there is an increased risk of detention of certain Christians in China. This is not enough to establish a sufficiently serious issue with the decision to render it unreasonable (*Vavilov* at para 100), especially given that the Officer demonstrated responsiveness to evidence of troubling conditions for Christians in China.

[41] In my view, the Applicant's arguments amount to a "line-by-line treasure hunt for error," which reasonableness review is not (*Vavilov* at para 102). He has not established that the decision is unreasonable (*Vavilov* at para 100).

III. **Conclusion**

[42] The application for judicial review is dismissed. The Officer's decision is reasonable and was rendered in a procedurally fair manner. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-1807-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

3. The style of cause is amended effective immediately to replace "X.L.Y" with "Xin Li Yuan" as the named Applicant in this matter.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1807-23
STYLE OF CAUSE:	XIN LI YUAN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JULY 4, 2024
JUDGMENT AND REASONS:	AHMED J.
DATED:	AUGUST 12, 2024

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