Federal Court Cour fédérale

Date: 20240911

Docket: IMM-13608-23

Citation: 2024 FC 1432

Ottawa, Ontario, September 11, 2024

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

YAN SHI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS FOR JUDGMENT

I. Overview

[1] The Applicant seeks judicial review of a decision of the Refugee Appeal Division [RAD] refusing his claim for refugee protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] I am allowing the application on two grounds. First, the RAD's conclusion that the corroborative evidence of the Applicant's wife did not overcome the credibility concerns with the Applicant's testimony lacked any justification. Second, the RAD failed to provide a reasoned basis for its implausibility finding about the lack of a paper summons.

II. Background

A. *The Applicant's refugee claim*

[3] The Applicant, a citizen of China, based his refugee claim on a fear of arrest by the Public Security Bureau [PSB] because he assisted an underground church member escape in 2016. The Applicant alleged that two days after assisting this individual, PSB agents came to his workplace to question him.

[4] According to the Applicant, PSB agents subsequently came to his house in May 2017 and told his family that they wanted to summon him to a police station. The Applicant was not home, and immediately went into hiding when his wife told him what happened. He stayed with his sister's family at their farm until he could arrange travel to Canada in October 2017. The Applicant sought asylum in November 2021.

[5] In support of his claim, the Applicant submitted a letter from his wife. She stated that since he went into hiding in May 2017, the PSB had visited their house approximately twice a year to inquire about his whereabouts and summon him to the police station. Between May 25, 2017 and January 24, 2022, there were 10 visits.

B. *The RAD decision*

[6] The RAD dismissed the Applicant's appeal, finding that the Refugee Protection Division [RPD] was correct in finding that he was neither a Convention refugee nor a person in need of protection.

[7] The determinative issue for the RAD was credibility. The RAD drew negative inferences based on inconsistencies in the Applicant's evidence about when he decided to make a refugee claim, and whether he had a physical encounter with the PSB. In addition, the RAD drew negative inferences based on the lack of a PSB paper summons, and the Applicant's delay in claiming refugee protection. Based on these credibility concerns, the RAD determined that the Applicant had not established, on a balance of probabilities, that he was "targeted by the PSB": Reasons and Decision of the Refugee Appeal Division dated October 12, 2023 at para 25 [RAD Decision].

[8] While the RPD had given no weight to the letter submitted by the Applicant's wife because of different ID card numbers, the RAD found the wife's explanation for the inconsistency reasonable. However, the RAD determined that this corroborative evidence did not overcome its credibility concerns. The RAD gave no reasons as to why.

III. Issues and Standard of Review

[9] In his written submissions, the Applicant asserts that the RAD erred in: (i) undertaking an overzealous and microscopic analysis of when he decided to make a refugee claim; (ii) drawing an adverse inference based on the lack of a paper summons; and (iii) improperly dismissing the

wife's corroborative evidence. At the hearing, the Applicant only addressed the latter two issues, which I find are determinative. As a result, I am not addressing the first issue.

[10] There is no dispute that the applicable standard of review is reasonableness. Reasonableness is a deferential, but robust standard of review: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 12-13 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8 [*Mason*]. A reviewing court must take a "reasons first" approach and evaluate the decision-maker's justification for their decision: *Vavilov* at para 84; *Mason* at paras 8, 63.

[11] 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; *Mason* at para 8. A decision should be set aside if it does not exhibit the requisite attributes of "justification, intelligibility and transparency": *Vavilov* at para 100; *Mason* at paras 59-61.

[12] Prior to the hearing, the Court issued a Direction requesting that the parties come prepared to address the following decisions: *Raza v Canada (Citizenship and Immigration)*, 2021 FC 299 [*Raza*]; *Kaiyaga v Canada (Citizenship and Immigration)*, 2022 FC 541 [*Kaiyaga*]; *Tofa v Canada (Citizenship and Immigration)*, 2023 FC 315; and *Kumar v Canada (Citizenship and Immigration)*, 2023 FC 346 [*Kumar*]. These decisions relate to the Applicant's argument that the RAD erred in finding that his corroborative evidence did not overcome its credibility concerns.

IV. Analysis

A. *The RAD erred in failing to justify why the corroborative evidence did not overcome its credibility concerns*

[13] I agree with the Applicant that the RAD's conclusion that his wife's corroborative evidence did not overcome the credibility concerns is unreasonable. However, as set out below, I do not agree with the error identified in the Applicant's written submissions. Rather, in my view, the RAD's error lies in the failure to justify its conclusion.

[14] The Applicant argues that the RAD erred in drawing an overall negative credibility finding before considering his wife's corroborative evidence, and then discounting the evidence on that basis: Applicant's Further Memorandum of Fact and Law at para 59.

[15] This Court has consistently held that it is unreasonable for a decision-maker to reject corroborative evidence simply because they do not believe the applicant: *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1583 at paras 22-26 [*Singh*]; *Bayram v Canada (Citizenship and Immigration)*, 2021 FC 235 at paras 25-27; *Li v Canada (Citizenship and Immigration)*, 2019 FC 307 at para 18; *Ren v Canada (Citizenship and Immigration)*, 2015 FC 1402 at paras 24-27; *Chen v Canada (Citizenship and Immigration)*, 2013 FC 311 at paras 19-21 [*Chen*]. The rationale is that this amounts to "inverted" or "circular" reasoning: *Sohel v Canada (Citizenship and Immigration)*, 2023 FC 1217 at para 48; *Singh* at para 26; *Chen* at para 20.

[16] However, this case is distinct from the above jurisprudence. Here, the RAD did not discount the wife's corroborative evidence because it had found the Applicant lacked credibility. Nor did the RAD find the wife's evidence itself lacked credibility or probative value.

[17] After its independent review, the RAD disagreed with the RPD's approach to the wife's evidence. The RPD had found the wife's explanation for the difference in ID numbers between her letter and accompanying ID unreasonable. As a result, it concluded that the evidence undermined the Applicant's overall credibility. On appeal, the Applicant argued that the RPD erred; that a reasonable explanation had been provided, and that the RPD should have therefore given weight to the wife's letter.

[18] The RAD agreed with the Applicant that the explanation for the inconsistency was reasonable. However, the RAD found that the wife's letter did not "overcome" the credibility concerns it had identified in the Applicant's evidence.

[19] This Court has held that once a negative credibility finding is made, it is open to the RAD to find that corroborating evidence does not outweigh or overcome credibility concerns with an applicant's evidence: *Kumar* at para 17; *Kaiyaga* at paras 55-57; *Raza* at para 43. That said, the RAD must provide adequate reasons to justify its conclusion.

[20] Justification is at the heart of reasonableness review. The Supreme Court has made clear that "it is not enough for the outcome of a decision to be *justifiable*". Rather, where reasons are required, "the decision must also be *justified*, by way of those reasons, by the decision maker to

those to whom the decision applies" [emphasis in original]: *Vavilov* at para 86. It is therefore incumbent on a decision-maker "to justify to the affected party, in a manner that is transparent and intelligible, the basis on which it arrived at a particular conclusion": *Vavilov* at para 96.

[21] Here, the fatal flaw in the RAD's decision is the absence of any justification for concluding that the wife's corroborative evidence did not overcome its credibility concerns. This evidence was central to the Applicant's claim that the PSB was pursuing him. The wife stated that the PSB visited their house to summon the Applicant 10 times between May 2017 and January 2022. The RAD, unlike the RPD, found her evidence credible, and it did not ascribe little weight or probative value to the letter. It was incumbent on the RAD to explain, with adequate reasoning, why this central evidence was not sufficient to overcome its credibility concerns.

[22] Furthermore, the Court cannot infer the RAD's rationale for its conclusion from the record. Where the rationale for an essential element of a decision cannot be inferred from the record, "the decision will generally fail to meet the requisite standard of justification, transparency and intelligibility": *Vavilov* at para 98.

[23] The lack of justification renders the RAD's decision unreasonable.

B. *The RAD erred in drawing an adverse inference based on a lack of a paper summons*

[24] I further find that the RAD erred in drawing a negative credibility inference based on the lack of a paper summons. The RAD concluded that "[i]f the PSB were this interested in the

Appellant and they have not been able to locate him at home, it is reasonable to expect that they would use their power of the law to summon the Appellant": RAD Decision at para 20.

[25] I agree with the Applicant that the RAD's conclusion amounts to an implausibility finding: *Huang v Canada (Citizenship and Immigration)*, 2019 FC 358 at para 17 [*Huang 2019*]. The jurisprudence is clear that an implausibility finding is only to be made in the "clearest of cases": *Zhu v Canada (Citizenship and Immigration)*, 2021 FC 745 at para 26; *Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968 at para 14; *Huang 2019* at para 18; *Sun v Canada (Citizenship and Immigration)*, 2015 FC 387 at para 26.

[26] This Court has held that an implausibility finding based on the lack of a summons may be reasonable where the decision-maker acknowledges the equivocal nature of the evidence and that the PSB's practices are variable. Nonetheless, the decision-maker must provide a reasoned basis for its conclusion based on the circumstances of the case: *Huang v Canada (Citizenship and Immigration)*, 2021 FC 1330 at para 14; *Mai v Canada (Minister of Citizenship and Immigration)*, 2021 FC 61 at paras 38-41; *Zheng v Canada (Minister of Citizenship and Immigration)*, 2019 FC 904 at paras 12-14; *Cao v Canada (Citizenship and Immigration)*, 2015 FC 790 at para 47.

[27] The RAD rejected the Applicant's argument that it was plausible that the PSB would continue to seek him without a paper summons because the law is discretionary. As noted by the RPD, article 82 of the *Public Security Administration Punishment Law* "states that a person 'may' be compulsorily summoned if they evade a summons". In addition, the country condition evidence "also confirms the PSB are inconsistent in enforcing laws, including following through with

summons": Reasons and Decision of the Refugee Protection Division dated January 23, 2023 at para 20. The RAD did not grapple with this evidence in its decision.

[28] Instead, the RAD relied on an article in the National Documentation Package for China entitled "China and Hong Kong: Political situation and treatment of protesters; implementation of national security law and treatment of protesters sent to mainland China". I agree with the Applicant that this article is not relevant and does not support the RAD's implausibility finding. The article speaks to a different law, in a different region, in a different context. It thus cannot objectively ground an implausibility finding.

[29] In addition, the RAD relied on this Court's jurisprudence to support its implausibility finding. As Justice Gleeson stated in *Huang 2019*, however, caution must be exercised in relying on jurisprudence to support an implausibility finding given that refugee claims are fact-specific:

> [20] It is trite to note that claims for protection are matters that turn on the particular facts of the claim. Prior decisions of this Court are of particular value where questions of law arise. However, jurisprudence needs to be approached with caution when relied upon to interpret evidence and to support findings of fact. A plausibility finding should be "'nourished' by reference to the documentary evidence" (Lorne Waldman, *Immigration Law and Practice*, 2nd ed (LexisNexis Canada, 2018) (loose-leaf), § 8.64; also see *He v Canada (Citizenship and Immigration)*, 2017 FC 1089 at para 8). In this case, it was not. As Justice Simon Fothergill recently noted, "[t]his Court has repeatedly warned against making assumptions about how the Chinese authorities would rationally behave, and whether one would expect them to issue a coercive summons" (*Huang* at para 21).
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> [Emphasis added]

[30] I agree with the Applicant that the RAD's reliance on the Court's decisions in *Luo v Canada (Citizenship and Immigration)*, 2019 FC 823 and *Li v Canada (Citizenship and Immigration)*, 2023 FC 1026 is misplaced. These cases are distinguishable as they involved individuals who were direct targets of the PSB based on either their political opinion or their participation in a house church. The Applicant did not allege that he faced persecution or risk on either of these grounds.

[31] Based on the foregoing, the RAD failed to provide a reasoned basis for its conclusion that it was reasonable to expect the PSB would issue a paper summons if they were interested in the Applicant.

V. Conclusion

[32] For these reasons, the RAD's decision is unreasonable and must be set aside. The matter is remitted to a differently constituted panel for redetermination.

[33] No question of general importance was proposed by the parties for certification, and I find that none arises in this case.

JUDGMENT in IMM-13608-23

THIS COURT'S JUDGMENT is that:

1. The application is allowed.
2. The Refugee Appeal Division's decision dated October 12, 2023 is set aside and the matter is remitted for redetermination by a differently constituted panel.
3. There is no question for certification.

"Anne M. Turley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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