

Federal Court



Cour fédérale

Date: 20241104

Docket: IMM-16222-23

Citation: 2024 FC 1754

Toronto, Ontario, November 4, 2024

PRESENT: Madam Justice Pallotta

BETWEEN:

QUANG MINH NGUYEN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant, Quang Minh Nguyen, is a citizen of Vietnam. He sought refugee protection in Canada based on a fear of religious persecution as a practicing Roman Catholic. The Refugee Protection Division (RPD) of the Immigration and Refugee Board accepted that Mr. Nguyen is a practicing Roman Catholic, but rejected his claim for protection on the basis that his fear of persecution was not well-founded. The Refugee Appeal Division (RAD) dismissed Mr. Nguyen's appeal. While the RAD noted an error in the RPD's analysis, it

ultimately agreed with the RPD that Mr. Nguyen had not established an objective basis for his fear of religious persecution in Vietnam.

[2] On this application for judicial review, Mr. Nguyen alleges that the RAD's decision was unreasonable and he seeks an order that would set it aside. In his written submissions, Mr. Nguyen also alleged that the RAD breached the principles of procedural fairness by raising a new issue without notice to him. He withdrew this allegation at the hearing.

[3] Mr. Nguyen states that he was a practicing Catholic in Vietnam.

[4] In 2018, his church divided into small groups, which Mr. Nguyen explained was due to Vietnamese authorities closing down Catholic churches, and the police attending his church to harass the parishioners during Mass. He joined a youth group, which he attended on Sundays at the home of the group leader.

[5] Mr. Nguyen's cousin established her own unregistered, underground "house church" with around ten members in early 2018. In April 2018, the cousin's house church was raided. She was detained by police, interrogated, abused, and warned against any further religious activities.

[6] After his cousin's arrest, the police brought Mr. Nguyen to the police station for questioning. They asked about his involvement in underground Catholic activities and whether he knew anything about his cousin's involvement with Catholic house churches, which he denied. The police then asked if Mr. Nguyen's parents were affiliated with any underground

religious activities, which he also denied. Mr. Nguyen was released after three hours and warned against involvement with house churches or Catholicism.

[7] With the help of a smuggler, Mr. Nguyen travelled to Canada in April 2019. Mr. Nguyen had no money and started working on farms. He learned about the possibility of seeking refugee protection from another farm worker and filed a claim for protection in early 2022. Mr. Nguyen alleges that if he is returned to Vietnam, he will face persecution at the hands of the Vietnamese authorities and the police. He fears he will be arrested and abused, and he states he would not be allowed to practice his religion freely.

[8] The RAD found there was no evidence of ongoing interest by the police. It was unclear if Mr. Nguyen's cousin was detained and questioned by the police solely because she was a leader of a house church, or for additional reasons. Mr. Nguyen did not know why his cousin was detained. She was released after one day and he lost contact with her. With respect to Mr. Nguyen's interaction with the police, the RAD noted that he was taken to the station for a couple of hours of questioning and warned not to engage in any illegal religious activity. Mr. Nguyen was not arrested or charged with a crime, had no further contact with the police, and left for Canada about a year later.

[9] The RAD provided a summary of country condition evidence regarding religious freedom in Vietnam, noting that Mr. Nguyen relied on the country condition evidence to support his claim. The RAD found that Mr. Nguyen's Catholic religion is not prohibited in Vietnam. While Mr. Nguyen alleged that he could not practice at a state registered church, where politics

and religion are tied together, the RAD found Mr. Nguyen had not established how politics would prevent him from practising his religion. The RAD also found the evidence did not establish that Mr. Nguyen would face a serious possibility of persecution if he chooses to attend an unregistered church. It found that the authorities are not generally motivated by the religious aspects of unregistered religious groups, but rather by the perceived threat they pose if they are politically active. This did not apply to Mr. Nguyen—he is not politically active, he has not engaged in activities critical of the government, and he provided no evidence that he would engage in such activities if he returned to Vietnam.

[10] The RAD recognized that the concept of religious freedom is broad and includes the right to practice one's faith in the manner they choose, in private or in public. However, Mr. Nguyen was required to establish that any restrictions on his religious practice amount to persecution, and the RAD found he had not done so. The RAD found an insufficient link between the country condition evidence and Mr. Nguyen's personal circumstances.

[11] Mr. Nguyen submits the RAD unreasonably concluded that he could return to Vietnam and freely practice his Roman Catholic faith without a serious possibility of persecution.

Mr. Nguyen states the RAD erred in finding that the general country conditions for underground Catholics in Vietnam are not relevant to him, he does not have the kind of profile that would give rise to persecution, he can join a registered church, and he would have religious freedom.

Mr. Nguyen states the RAD also erred in its assessment of similarly situated individuals, and specifically the experience of his cousin.

[12] At the hearing, Mr. Nguyen explained that his arguments would focus on the RAD's findings that (i) he could attend a registered church; and (ii) he did not have a profile that would render him at risk of persecution for attending an underground church.

[13] The reasonableness of the RAD's decision is reviewed according to the guidance set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. The Court's role is to determine whether the decision is based on an internally coherent and rational chain of analysis, and justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85. Both the outcome of the decision and its reasoning process must be considered in assessing whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility: *Vavilov* at paras 15, 95, 99, 136.

[14] Mr. Nguyen argues the RAD's finding that he could join a registered church is unreasonable because it was not for the RAD to determine how he should practice his faith: *Zhou v Canada (Citizenship and Immigration)*, 2009 FC 1210 at paras 21-27. The country condition evidence indicates there are deep divisions between registered and unregistered religious groups in Vietnam, and registered churches are substantially controlled by the state.

[15] Mr. Nguyen argues the RAD also erred by finding that the restrictions on religious freedom would not apply to him because he is not political. He submits the RAD's finding that underground Catholics do not typically face harm in Vietnam unless they have a certain profile is neither supported by the country condition evidence, nor the concept of religious freedom. It was unreasonable for the RAD to find that he can enjoy religious freedom as long as he refrains from

any behaviour that might offend the government or be considered “political”. Mr. Nguyen contends that this restricts his religious practice and is fundamentally incompatible with the concept of religious freedom.

[16] In any event, Mr. Nguyen contends that an objective basis for his fears may be found in the experience of similarly situated persons: *Fodor v Canada (Citizenship and Immigration)*, 2020 FC 218, at para 19. Mr. Nguyen submits the RAD erred in finding that his cousin’s circumstances were not probative of his risk. The RAD stated it was unclear if his cousin was detained and questioned by the police solely because she was the leader of a house church or for additional reasons, adding that Mr. Nguyen did not know why his cousin was detained by the police. Mr. Nguyen states the RAD’s finding that there may have been additional reasons for her detention is unsupported speculation that cannot be sustained, and the RAD also mischaracterized his testimony. He stated he did not know why his cousin’s house was raided, and he was not asked if he knew why his cousin was detained. Mr. Nguyen argues that the RAD’s speculation that there might have been additional reasons for his cousin’s detention cannot be sustained. There was no evidence to suggest she was arrested for any reason other than her religious practice and profile as a leader and member of a house church. Even though his cousin’s treatment may not be determinative of his claim, Mr. Nguyen submits the RAD unreasonably found it was not relevant.

[17] In my view, Mr. Nguyen has not shown that the RAD’s decision was unreasonable.

[18] I am not persuaded the RAD made an unreasonable finding that Mr. Nguyen could practice his religion. The RAD considered that Mr. Nguyen could join a registered church, or, if he preferred, an unregistered one. As the respondent correctly points out, the RAD found that Mr. Nguyen had not met the test for establishing a risk of persecution in either case—if he chose to attend a registered Catholic church upon returning to Vietnam, or an unregistered one.

[19] As noted above, the RAD specifically recognized that the concept of religious freedom is broad and includes the right to practice one's faith in the manner of one's choosing, in private or in public. The RAD found, however, that Mr. Nguyen was required to establish that any restrictions on his religious practice amount to persecution and he had not done so, for either type of church. If he were to attend a registered church, the RAD found Mr. Nguyen had not established how the Communist government's control of a state registered church would prevent him from practicing his religion. If he were to attend an unregistered Church, the objective country condition evidence did not establish a serious possibility of persecution because Mr. Nguyen does not have any of the characteristics that are the usual reasons the authorities might harass or persecute a religious practitioner, such as being politically active.

[20] Mr. Nguyen submits the RAD's findings regarding the risks to underground Catholics are not supported by country condition evidence, and he points to other statements in the evidence that he alleges demonstrate significant restrictions on religious freedom for unregistered Catholics. However, it is not within this Court's role on judicial review to reweigh and reassess the evidence: *Vavilov* at para 125. In my view, the RAD's reasons demonstrate that it carefully considered the country condition evidence, and it was aware of reports of harassment by

unregistered church groups and the difficulty categorizing reported incidents as being solely based on religion, politics, or ethnicity. I am not persuaded that the RAD's findings were unsupported. Based on the evidence, the RAD's findings were reasonably open to it.

[21] I also disagree with Mr. Nguyen that the RAD's findings are incompatible with religious freedom, because he would be required to limit or circumscribe his religious practice. The RAD noted that Mr. Nguyen is not politically active, he has not engaged in activities critical of the government, and he provided no evidence that he would engage in such activities if he returned to Vietnam. Mr. Nguyen did not establish that politics, for example, would restrict or affect his ability to practice his religion.

[22] In my view, Mr. Nguyen's argument about his cousin's police encounter misses the RAD's point. The RAD was not speculating that there were additional reasons for the cousin's detention. The RAD was pointing to a gap in the evidence. Mr. Nguyen's cousin was the leader of her own, unregistered house church, and the RAD was stating it was unclear if she was questioned by the police solely because she was the leader of a house church, or if there were other reasons as well. In other words, Mr. Nguyen, who was not a leader of his own house church, had not shown that his cousin's experience was probative of the risk he would face by practicing his religion in Vietnam.

[23] In conclusion, I agree with the respondent that it was open for the RAD to find that Mr. Nguyen's evidence of his experiences in Vietnam—having been questioned by the police on one occasion, after his cousin was detained for operating an underground church—did not

establish a serious possibility of persecution. Mr. Nguyen has not established that the RAD's decision was unreasonable, and accordingly, this application for judicial review must be dismissed.

[24] The parties did not propose a question for certification and there is no question to certify.

JUDGMENT IN IMM-16222-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. No question of general importance is certified.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-16222-23

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