

Federal Court



Cour fédérale

Date: 20111018

Docket: IMM-1079-11

Citation: 2011 FC 1176

Ottawa, Ontario, October 18, 2011

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

ZHIQUAN CHEN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of the decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated 17 January 2011, which refused the Applicant's application to be deemed a Convention refugee or person in need of protection under sections 96 and 97 of the Act.

BACKGROUND

[2] The Applicant alleges that he is a 40-year-old citizen of the People's Republic of China. He speaks Cantonese as his first language. He claims he is a Falun Gong practitioner. He arrived in Canada on 2 June 2008 from China.

[3] After a divorce in February 2007, the Applicant says he became depressed. He alleges that a co-worker introduced him to Falun Gong practices and, after several months of Falun Gong exercises, his depression lifted. He says that on 14 May 2008 he went into hiding after his Falun Gong group instructor was arrested by the Public Security Bureau (PSB). Because he believed he could not remain in China, the Applicant, with the assistance of a smuggler, came to Canada and made his claim for refugee protection on 5 June 2008. His claim was based on his fear of persecution in China for being a member of the Falun Gong movement.

[4] The RPD held its hearing to assess the Applicant's claim on 11 January 2011. At the hearing, the Applicant, his counsel and an interpreter were present.

[5] The Applicant presented the RPD with three original documents in support of his identity: a Resident Information Certificate issued in 2000 (2000 RIC); a Household Registration Certificate (Hukou); and a Divorce Certificate. The RPD noted that the Applicant had been informed by letter on 27 October 2010 that he was required to provide documentation to support his identity. The RPD also noted a letter of 1 March 2010 in which the Applicant was required to provide his RIC for

examination by the RPD. Though he provided photocopies of his documents on 23 December 2011, the Applicant waited to provide original documents until the hearing date. At the hearing, the RPD asked the Applicant several questions about the information contained in the documents he provided in support of his identity. The RPD also asked him about the physical appearance of his documents.

[6] During the hearing, the Applicant was also questioned regarding the tenets and practices of Falun Gong as well as his own practice of Falun Gong exercises and his knowledge of the Zhuan Falun, the primary text of the Falun Gong movement.

[7] Following the hearing, the RPD determined that the Applicant had provided insufficient documentation to establish his identity. The RPD also found that he was not a Falun Gong practitioner so he was not a Convention refugee or a person in need of protection.

DECISION UNDER REVIEW

Identity

[8] The RPD found that the documents the Applicant provided did not establish his identity.

[9] The RPD asked the Applicant why he had not provided his RIC to the RPD when requested on 27 October 2010. He said that he had moved in January 2010 and had not received the request. When asked if he had notified Canada Post of his address change, the Applicant said that he had, though he did not respond when asked if he had proof that he had done so. He said he had informed his counsel of his address change. The RPD found that the Applicant's explanation for why he had

not provided documents until the beginning of the hearing was unreasonable and that this undermined his credibility as a witness.

[10] In addition to his 2000 RIC, the Applicant testified that he had received two other RIC's, one in 1988 when he was 17 and one in 1998 when he was 27. He testified that he replaced the 1998 RIC because he lost it in December of 1999. He said he reported the loss in January 2000 and received the new card between two and three months later. Though the Applicant was unable to say when he was issued the replacement RIC, the RPD confronted him with the fact that, on its face, it was issued in April 2000. The RPD found that there was an inconsistency between his testimony that the RIC was issued two or three months after he reported the loss in January 2000 and its issue date of April 2000.

[11] The Applicant was also asked to describe the process he had gone through to obtain a replacement RIC. He said that he paid for a photograph, got a letter from the "Township Office" and filled out a form. The RPD found that this did not match the process described in the documentary evidence before it and drew an adverse inference as to the Applicant's credibility.

[12] The RPD then asked the Applicant to describe his RIC. He was unable to verbally describe the document so the RPD provided him with paper to draw on. The RIC he drew had a space for a photograph on the left, the gender to the right of the picture, and an address below the gender. The Applicant also indicated that the personal registration number was immediately below the address. When prompted by the RPD, he indicated that his name was on the RIC.

[13] The RPD also asked the Applicant to describe the background colour and any identifying features of the RIC. He correctly stated that there was a hologram on the front of the card, though he also said that there was no colour. In response, the RPD confronted the Applicant with the fact that the colour was “a blue to green hue, consisting of a ‘net-like’ pattern.” The RPD asked the Applicant if there was a seal on the front of the card and he said there was. When asked to describe the reverse side of the RIC, he said “Resident Identity Card” was written on it and it had the “emblem of China” on it. When asked about the colour of the card, “he indicated there was a net pattern of green lines.” The RPD noted that the net pattern on the back of the card was green and red, not green only.

[14] The RPD found that the description given by the Applicant in oral testimony showed that he had limited knowledge of the RIC, the singular most important identity document used by Chinese citizens. Because of the Applicant’s limited knowledge of the information contained in the RIC and its physical features, the RPD drew a further negative inference as to his credibility.

[15] The RPD also asked the Applicant to say what Chinese citizens use the RIC for. He said that it was used for renting a house, to prove one’s age when working, and for booking a hotel room when travelling out of province. On further questioning, the Applicant agreed that he had used his RIC for both his marriage and divorce, for banking, and for going to the hospital. The RPD also asked if the RIC might be used for elections or travelling out of country and the Applicant said that he had not used it for these things.

[16] The RPD invited the Applicant to comment on why he could not describe certain important uses of the RIC. The Applicant said that he was from a rural area where the RIC was not often used. The RPD then asked the Applicant how many people lived in his area. He answered that there were approximately 20,000, and that there were approximately 500,000 people living in the adjacent city of Huadu.

[17] The RPD compared the Applicant's testimony with documented uses of the RIC in China and concluded that he "has not provided reasonable responses or demonstrated adequate knowledge." Based on this conclusion, and the fact that the RIC is "the most important document to establish the claimant's identity as a national of the People's Republic of China," the RPD drew another negative inference with respect to the Applicant's credibility and the authenticity of the RIC.

[18] Given all the negative inferences it drew regarding the Applicant's credibility and the authenticity of the RIC, the RPD concluded that the Applicant had not established his identity. The RPD also found that, based on documentary evidence, fraudulent documents are easy to obtain in China. It concluded that the Applicant had submitted a fraudulent RIC.

Other Documents

[19] In addition to its concerns with the RIC, the RPD also found that the Hukou presented by the Applicant in support of his identity was a fraudulent document because the number on it – what the RPD calls the "identifying number" – was identical to the identity number on the RIC. Having

found that the RIC was fraudulent, the RPD found that the Hukou containing the same number was also fraudulent.

[20] The Applicant also presented a Divorce Certificate. Like the Hukou, the Divorce Certificate included the same Resident Identity Number as the RIC. The RPD concluded that the Divorce Certificate was also a fraudulent document. The RPD put little weight on either the Hukou or the Divorce Certificate in establishing his identity and concluded that the Applicant had not produced sufficient acceptable documentation to satisfy the requirements of section 106 of the Act or Rule 7 of the *Refugee Protection Division Rules, SOR/2002-228 (Rules)*. He did not provide an acceptable explanation of his failure to provide acceptable documents. The RPD also found that the Applicant had knowingly submitted false documents and concluded that he was not a credible witness and that the credibility of his entire claim was in doubt.

Alternative Finding

[21] In addition to finding that his identity was not established, the RPD found that the Applicant was not a genuine Falun Gong practitioner. It highlighted his testimony that he had read Zhuan Falun three times and continued to read portions of it weekly. Though he claimed to have read Zhuan Falun, he was not able to identify five of the eight characteristics the RPD indicated Master Li – the founder of Falun Gong – had said made Falun Gong unique. The Applicant did not respond when asked what one cultivates when practicing Falun Gong exercises.

[22] When asked about Falun Gong beliefs, the Applicant also said that the Falun – identified by him as the emblem created by Master Li - was located in the abdomen and was set in motion by

Falun Gong exercises. Though this statement was correct, the RPD found his testimony that the wheel stops rotating when the practitioner stops exercising was incorrect. The Applicant also gave incorrect answers to questions about the number of movements in a Falun Gong exercise and what a practitioner would feel when performing it. The RPD asked him what the purpose of his favourite exercise was. He said, with prompting, that the purpose was “unblocking meridians.” He incorrectly said that a meridian was a blood vessel, with the RPD noting that a meridian in Falun Gong is an energy pathway. The RPD also found that his explanation of how Karma was felt in daily life was inadequate.

[23] The RPD concluded that the Applicant’s answers to its questions on Falun Gong beliefs and practices did not show true knowledge or commitment to Falun Gong. The RPD noted that Master Li said that understanding of the philosophy of Falun Gong was necessary to elevate the exercises above ordinary Qi Gong exercises. The RPD found that the Applicant had not studied the Zhuan Falun and was not and never had been a Falun Gong practitioner.

Conclusion

[24] The RPD found that the Applicant was not a citizen of the People’s Republic of China, did not face a serious risk of persecution, and was not at risk of torture or cruel and unusual treatment or punishment. The RPD denied the Applicant’s claim because there was no basis on which his claim could succeed.

ISSUES

[25] The Applicant raises the following issues:

1. Whether the RPD erred in its analysis his identity;
2. Whether he was denied procedural fairness by inaccurate translation at the hearing.

STATUTORY PROVISIONS

[26] The following provisions of the Act are applicable in these proceedings:

Convention Refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries

Person in Need of Protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, And

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

...

Credibility

106. The Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes aux quelles est reconnu par règlement le besoin de protection.

...

Crédibilité

106. La Section de la protection des réfugiés prend en compte, s'agissant de crédibilité, le fait que, n'étant pas muni de papiers d'identité acceptables, le demandeur ne peut raisonnablement en justifier la raison et n'a pas pris les mesures voulues pour s'en procurer.

documentation.

[27] The following provision of the Rules is also applicable in these proceedings:

**Documents Establishing
Identity and Other Elements
of the Claim**

7. The claimant must provide acceptable documents establishing identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they were not provided and what steps were taken to obtain them.

**Documents D'Identité et
Autres Éléments de la
Demande D'Asile**

7. Le demandeur d'asile transmet à la Section des documents acceptables pour établir son identité et les autres éléments de sa demande. S'il ne peut le faire, il en donne la raison et indique quelles mesures il a prises pour s'en procurer.

STANDARD OF REVIEW

[28] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9, held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[29] Findings of credibility and assessment of the evidence are within the RPD's areas of expertise and, therefore, deserving of deference. They are reviewable on a standard of reasonableness. See *Hassan v Canada (Minister of Employment and Immigration)*, [1992] FCJ No

946 (QL) (FCA) (1992), 147 NR 317; and *Ched v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1338 at paragraph 19.

[30] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with “the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.” See *Dunsmuir*, above, at paragraph 47; and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only if the decision was unreasonable in the sense that it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

[31] The second issue raised by the Applicant concerns the adequacy of translation at the RPD hearing. Adequacy of translation is a procedural fairness issue, which attracts the correctness standard. See *Khosa*, above, at paragraph 43. The Federal Court of Appeal, in *Mohammadian v Canada (Minister of Citizenship and Immigration)* 2001 FCA 191 [*Mohammadian*], at paragraph 4, held that the factors for assessing accurate translation in a criminal context, enunciated by the Supreme Court of Canada in *R. v Tran*, [1994] 2 SCR 951, applied to immigration proceedings. In *Singh v Canada (Minister of Citizenship and Immigration)* 2010 FC 1161 [*Singh*], at paragraph 3, Justice François Lemieux summarized the factors as follows:

- a. The interpretation must be precise, continuous, competent, impartial and contemporaneous.
- b. No proof of actual prejudice is required as a condition of obtaining relief.

- c. The right is to adequate translation not perfect translation. The fundamental value is linguistic understanding.
- d. Waiver of the right results if an objection to the quality of the translation is not raised by a claimant at the first opportunity in those cases where it is reasonable to expect that a complaint be made.
- e. It is a question of fact in each case whether it is reasonable to expect that a complaint be made about the inadequacy of interpretation.
- f. If the interpreter is having difficulty speaking an applicant's language and being understood by him is a matter which should be raised at the earliest opportunity.

ARGUMENTS

The Applicant

The RPD Erred in its Assessment of the Applicant's Identity

The Resident Identity Card

[32] In essence, the Applicant's argument is that the RPD based its assessment of his identity on the fact that the documents were only presented to the RPD at the beginning of the hearing and the Applicant's inability to accurately describe the RIC. By so doing, the RPD did not base its assessment of the Applicant's identity on all the evidence before it.

[33] The Applicant argues relying on *Bouyaya v Canada (Minister of Citizenship and Immigration)* 2005 FC 1042 [*Bouyaya*], that there is a presumption of validity attached to documents provided by foreign governments. As there was no evidence on their face that the documents in this case were false, the presumption as to validity of the Applicant's documents was not rebutted.

[34] Further, the Applicant argues that the examination by the RPD of the events surrounding the replacement of the Applicant's 1998 RIC was unreasonably close. The RPD's conclusion that the RIC was fraudulent was based on what it found was an inconsistency between the Applicant's testimony about the replacement of the 1998 RIC and the issue date on the 2000 RIC. The Applicant testified that he reported his RIC lost in December of 1999 and was issued a new one between two and three months later. The issue date on the face of the 2000 RIC was April 2000. The Applicant says that there was no inconsistency between his testimony and the issue date because three months after late December 1999 could be approximately April 2000. The inconsistency between the Applicant's testimony and the issue date is reasonably explained by the fact that the replacement occurred approximately ten years prior to the Applicant's testimony about it and was not a major event in the Applicant's life. There is no inconsistency between the Applicant's testimony and the issue date of the RIC and there was no evidence on the face of the RIC that it was fraudulent, so the presumption of validity set out in *Bouyaya*, above, was not rebutted. The RPD's finding that the RIC was fraudulent was not based in the evidence before it and was unreasonable.

The Other Documents

[35] The Applicant says that the RPD's findings that the Divorce Certificate and Hukou were fraudulent were based solely on the fact that these documents contained the resident identity number from the RIC which the RPD had already found to be fraudulent. The RPD's finding was not based on a proper examination of these documents themselves. The RPD found that the Divorce Certificate and Hukou could not be relied upon because they contained the identity number from the

RIC and did not have any security features. However, the Applicant argues that the RPD did not look at the presence of security features on the RIC to establish that document's authenticity. To reject two documents because of their lack of security features while not accepting a document that had security features was unreasonable.

[36] The Applicant also says that the RPD assessed these documents having already decided that the Applicant had not established his identity as a citizen of the People's Republic of China. At paragraph 17 of the Decision, the RPD notes that "The panel [...] is left to conclude on the balance of probabilities that the claimant is lacking credibility and not a genuine citizen of the People's Republic of China." This statement occurs prior to the RPD's analysis of the Hukou and the Divorce Certificate. The Hukou and Divorce Certificate were analysed through the lens of a conclusion the RPD had already reached on the Applicant's identity. The RPD failed in its obligation to assess the other documents independently of the RIC.

[37] The Applicant points to *Zheng v Canada (Minister of Citizenship and Immigration)* 2008 FC 877 as establishing the obligation of the RPD to consider the documents before it independently of the RIC. The Applicant further relies on *Bouyaya*, above, for the proposition that the RPD must not reject documents solely based on the Applicant's testimony, but must also look at the documents themselves.

The Applicant's Right to Procedural Fairness Was Breached by Inaccurate Translation

[38] The Applicant also argues that the translation provided at the RPD hearing was not accurate so his right to procedural fairness was breached. In *Mohammadian*, above, at paragraph 4, the

Federal Court of Appeal held that translations at RPD hearings must be continuous, precise, competent, impartial, and contemporaneous. Further, that court held that, while actual prejudice to an applicant need not be shown, the standard for the translation is not perfection but linguistic understanding. As a general rule, in order to ground judicial review, objections to translations must be raised at the hearing where it is reasonable to expect an applicant to do so, and it is a question of fact for the reviewing court whether it was reasonable for an applicant to have raised the issue at the hearing.

[39] Based on the affidavit of Ms. Mary Shen, an English/Cantonese interpreter, the Applicant argues that there were errors in the translation at the hearing. These errors resulted in the RPD misunderstanding his answers to some of its questions about his understanding of Falun Gong beliefs and practices. The RPD based its conclusion on the Applicant's membership in Falun Gong on his answers to these questions. Because his claim to be a person in need of protection depended on the RPD's conclusion as to his membership in Falun Gong, the Applicant says that he suffered actual prejudice from the erroneous translation. Although actual prejudice from an inaccurate translation need not be shown in order to establish a breach of procedural fairness, because it has been shown in this case the decision of the RPD should be quashed.

[40] The Applicant also says that it was not reasonable to expect him to object to the erroneous translation during the hearing. The errors alleged are in the translation from the English questions posed by the RPD to the Applicant. The Applicant did not speak English and his counsel did not speak Cantonese so he could not have known of the error in translation during the hearing. The Applicant only realized there were errors when he later read the translation of the hearing transcript.

[41] The Decision should be quashed because the RPD failed to provide an accurate translation and the Applicant suffered actual prejudice.

The Respondents

The Findings of The RPD With Respect to The Documents Provided Were Reasonable

[42] The Respondent argues that it was reasonable for the RPD to conclude that the Applicant was not credible based on the evidence before it. The Respondent notes that the Applicant did not provide his original documents in advance of the hearing for forensic testing, that he was unable to describe the physical features of the RIC, and that he had limited knowledge of the uses of the RIC. Based on this evidence, the RPD's finding that the Applicant was not credible was reasonable. Since this finding was reasonable, the findings of the RPD with respect to credibility should stand. The finding that the RIC was not authentic was reasonable.

[43] The Respondent also says that the findings of the RPD with respect to the Hukou and Divorce Certificate were reasonable. These documents contained the same resident identity number as did the RIC. The RPD's analysis of these documents stood or fell on the authenticity of the RIC. Since the RIC was found to be inauthentic by the RPD, it follows that the documents with the same resident identity number on them must also be fraudulent. Since the finding that the RIC was fraudulent was reasonable, the finding that these other documents were fraudulent was also reasonable.

[44] Since the Applicant's claim depended on his being able to establish his identity, and the documents establishing his identity were reasonably found fraudulent by the RPD, the Respondent argues that it was reasonable for the RPD to find that the Applicant had not established his identity and that his claim must fail.

The Finding That The Applicant Was Not a Falun Gong Practitioner Was Reasonable

[45] The RPD's conclusion that he was not a Falun Gong practitioner was reasonable because the Applicant did not demonstrate sufficient knowledge of Falun Gong teachings or practices. The Respondent notes that the Applicant was unable to describe five of the eight major characteristics of Falun Gong that make it unique. The Applicant also could not explain what one cultivates when engaging in Falun Gong exercises. Based on these and numerous other deficiencies in the Applicant's knowledge of Falun Gong, the RPD's conclusion that the Applicant was not a Falun Gong practitioner was reasonable.

The Applicant Was Not Denied Procedural Fairness

[46] Contrary to the Applicant's assertions, the interpretation at the hearing was accurate and he was not denied procedural fairness. In any event, the Respondent argues that the answers of the Applicant to questions regarding Falun Gong practices and beliefs were sufficient to ground a finding by the RPD that the Applicant was not a genuine practitioner. Since this finding was reasonable, the RPD's finding that the Applicant was not at risk of persecution because of his membership in Falun Gong was reasonable.

ANALYSIS

[47] As the Decision makes clear, the RPD found that the Applicant could not credibly establish his identity as a national of the People's Republic of China and, "in the alternative," that he "has not studied Zhuan Falun and on a balance of probabilities that the [Applicant] is not, nor ever was, a Falun Gong practitioner."

[48] In relation to the second, alternative ground, the Applicant says that the unsatisfactory responses he provided – as set out by the RPD in its reasons – were the result of translation errors at the hearing that only became clear to him after a transcript of the hearing was provided.

[49] The alleged errors are set out in the affidavit of Ms. Shen who says she is "an interpreter proficient in the English and Cantonese languages."

[50] I have reviewed the alleged translation errors as set out in Ms. Shen's affidavit against the text of the translation. It seems to me that, when the text is read, many of the allegations of error are simply incorrect and that others have no materiality to the RPD's reasons. Taken as a whole, the numerous mistakes and gaps in the Applicant's knowledge of Falun Gong theory and practice cannot, in my view, be explained as errors of interpretation.

[51] In my view, the record shows that the Applicant understood and provided answers to the questions he was asked about his knowledge of Falun Gong and his own practice. There is nothing

to indicate that his unsatisfactory answers on the points that were used by the RPD to ground its conclusions on the Falun Gong aspect of the Decision had anything to do with translation errors.

[52] It is noteworthy also that the Applicant has not provided the Court, by way of affidavit, with evidence as to which questions he did not understand and how the translation errors prevented him from providing the RPD with a full account of his knowledge and practice of Falun Gong. Ms. Shen's affidavit does not remedy this deficiency and the translation errors she raises are simply not supported by the written transcript or are not material to the Decision in a way that would result in procedural unfairness.

[53] On the evidence before me, I cannot say that the interpretation in this case was not continuous, precise, competent, impartial or contemporaneous in any material way that would have denied the Applicant natural justice or procedural fairness. See *Mohammadian*, above.

[54] As Justice Lemieux pointed out in *Singh*, above, at paragraph 3, "the right is to adequate translation not perfect translation. The fundamental value is linguistic understanding." The translation in the present case may not have been perfect but there is no evidence that it was materially inadequate or that it resulted in a misunderstanding on the points used by the RPD to ground its alternative finding that the Applicant was not a Falun Gong practitioner.

[55] There was a reasonable basis for the RPD's conclusion that the Applicant, on a balance of probabilities, has not studied Zhuan Falun and is not a Falun Gong practitioner. As always, it is possible to take issue with some of the RPD's conclusions on this issue, but I cannot find anything

in the Decision that makes it unreasonable on this point and which takes it outside of the range described in *Dunsmuir*.

[56] Because the Decision can stand on this ground alone, there is no point in considering the issues and arguments raised by the Applicant in relation to the RPD's identity issue. Even if the Applicant is who he says he is, he has not established that he is a Falun Gong practitioner, which is the basis for his section 96 and 97 claim.

[57] Counsel agree there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

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

“James Russell”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-1079-11

STYLE OF CAUSE: ZHIQUAN CHEN

- and -

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: August 31, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** HON. MR. JUSTICE RUSSELL

DATED: October 18, 2011

APPEARANCES:

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APPLICANT

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RESPONDENT

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RESPONDENT