

Federal Court



Cour fédérale

**Date: 20170530**

**Docket: IMM-4057-16**

**Citation: 2017 FC 532**

**Ottawa, Ontario, May 30, 2017**

**PRESENT: The Honourable Madam Justice Mactavish**

**BETWEEN:**

**YESHI THOPKE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] Yeshi Thopke seeks refugee protection in Canada. He claims to be an ethnic Tibetan and a citizen of the People's Republic of China who fears persecution in China because he follows His Holiness the Dalai Lama and does not recognize China as the lawful government of Tibet.

[2] The Refugee Protection Division of the Immigration and Refugee Board of Canada rejected Mr. Thopke's claim because it determined that he had failed to establish his identity

through the documents he provided, and because it did not find his testimony to be credible. The Refugee Appeal Division subsequently confirmed the decision of the RPD.

[3] Mr. Thopke now seeks judicial review of the RAD's decision. He submits that the RAD erred in concluding that he failed to prove his identity.

[4] For the reasons that follow, I am satisfied that the RAD's conclusion that Mr. Thopke failed to establish his identity was reasonable. Consequently, his application for judicial review will be dismissed.

## **II. Background**

[5] Mr. Thopke claims that he was born in Tibet, China on May 3, 1969.

[6] In or around 1985, when Mr. Thopke was approximately 19 years old, he joined a Tibetan Buddhist monastery and became a monk. Since that time he has viewed the Dalai Lama as his spiritual and political leader.

[7] Mr. Thopke says that he left China in 1994 when he was about 26 years old after becoming fearful that he would be arrested for participating in demonstrations against the Chinese government. He says that he would be persecuted if he returned to Tibet because he follows the Dalai Lama and believes that Tibet is an independent nation under illegal military occupation. Mr. Thopke further claims that the Chinese government prohibits the belief that the Dalai Lama is the leader of all Tibetans, and that Chinese police are known to target followers of the Dalai Lama for harassment.

[8] Mr. Thopke says that he fled China and travelled through Nepal where he registered at the Office of the Representative of the Dalai Lama. He then travelled to, and settled in a Tibetan colony in Mungod, India where he continued his monastic life.

[9] As neither Nepal nor India is a signatory to the *Convention relating to the Status of Refugees*, 189 U.N.T.S. 150, Can. T.S. 1969 No. 6, Mr. Thopke seeks refugee protection from Canada.

[10] Mr. Thopke provided five documents to establish his personal and national identity:

- a certified true copy of his original Chinese Resident Identity Card (RIC) issued in 2010;
- a copy of a *hukou*, or a Chinese household registration issued in July 2013;
- a letter from the Office of the Representative of the Dalai Lama in Nepal, which indicated that Mr. Thopke came from Tibet;
- a copy of a Tibetan Voluntary Revenue Contribution (Freedom) Booklet, also known as a “Green Book”; and
- an Identity Certificate issued by the Government of India.

[11] At the RPD, Mr. Thopke testified that he had also had an Indian Registration Certificate - a document that he says is required in order to obtain an Indian Identity Certificate. However, he stated that this document was taken by Indian authorities when he departed India.

[12] Finally, Mr. Thopke submitted an email from a Professor in Chinese politics and economics that discussed various ways in which identity documents are issued in different regions in China.

### **III. The Refugee Protection Division Decision**

[13] The RPD determined that Mr. Thopke had not established his personal or national identity as required by section 106 of the *Immigration and Refugee Protection Act*, 2001 S.C. 2001, c. 27.

[14] With respect to the two Chinese documents, the RPD noted that the RIC and the *hukou* were purportedly issued by the Chinese government in 2010 and 2013 respectively, even though Mr. Thopke testified that his family had told Chinese authorities that he had died in 2003 or 2004.

[15] Insofar as Mr. Thopke's RIC was concerned, the RPD noted that country condition evidence indicated that Chinese laws and procedures relating to the issuance of RICs require an applicant to present himself to Chinese authorities and to submit an application form. The applicant must also have his photograph taken or provide his own digital photograph, which must then be authenticated. In light of these requirements, the RPD did not accept Mr. Thopke's claim that his family had provided an old photograph to Chinese authorities and that his brother had been able to obtain the RIC on his behalf. The RPD also noted that fraudulent RICs are widely available in China and can be obtained from outside the country.

[16] The RPD also assigned little weight to the evidence from the Professor of Chinese politics and economics. Mr. Thopke's counsel tendered this evidence to demonstrate that Chinese officials do not always follow Chinese law when issuing identity documents. The Professor's email stated that it was unlikely that Chinese officials would require Tibetans to travel to a designated location in order to obtain identity documents in person. The RPD found that the opinion did not indicate whether the Professor had investigated the practices that were

actually followed for issuing RICs in Tibet. It further found that the Professor's biography did not demonstrate that his areas of study were relevant to the issuance of official identification documents in the relevant regions of China. The RPD also did not accept that Chinese officials would implement a practice that was inconsistent with the applicable laws. Consequently, it drew a negative inference as to the authenticity of the RIC.

[17] Similarly, the RPD was not satisfied as to the authenticity of the *hukou*. It again referred to Mr. Thopke's claim that in 2003 or 2004 his family had told the Chinese authorities that he had died, determining that this claim was inconsistent with him being registered in his family's *hukou* in 2013. The RPD also noted that fraudulent *hukous* are widely available in China and can be obtained from outside the country.

[18] The document from the Office of the Representative of the Dalai Lama in Nepal and the Green Book were both tendered to establish Mr. Thopke's identity as a Tibetan. The RPD chose to assign little weight to these documents, however, as they were not issued by a government. The RPD further found that the document from Nepal contained personal information that had been handwritten in both pencil and pen, giving it limited integrity. It also found that the information contained in the Green Book indicated that it was issued in 1995, and that the document-holder was 18 years old at that time. This was inconsistent with Mr. Thopke's testimony that he was approximately 26 years old in 1994.

[19] The RPD also determined that the Indian identity documents produced by Mr. Thopke could not be relied on as evidence of his identity, given his admission that he had lied to Indian officials in order to obtain the documents, and that he had told them that he was born in India in 1982.

[20] The RPD found that Mr. Thopke's testimony as to how he obtained these documents demonstrated his propensity to lie and to use fraudulent documents. The RPD thus concluded that Mr. Thopke had failed to establish his identity.

#### **IV. The Refugee Appeal Division Decision**

##### *A. Issues raised at the RAD*

[21] Mr. Thopke did not submit any new evidence to the RAD and he did not request an oral hearing of his appeal. He also did not challenge the RPD's findings with respect to the *hukou* and the Green Book, nor did he challenge the RPD's findings as to the implausibility of his claim that his family had been able to obtain a RIC on his behalf in 2010, given his testimony that they had reported him as having died in 2003 or 2004.

[22] Mr. Thopke did challenge the RPD's finding with respect to the weight to be given to the Professor's opinion regarding the process followed by the Chinese authorities in issuing RICs. He also argued that the RPD unfairly drew a negative inference from the fact that he had admitted to lying to Indian officials in order to obtain identification documents, and that it failed to consider that he had acted out of necessity in order to avoid discrimination in India. Mr. Thopke further argued that the fact that the document from the Office of the Representative of the Dalai Lama in Nepal had information recorded on it in both pencil and pen was not a sufficient basis to dismiss its authenticity.

##### *B. RAD's identity assessment*

[23] The RAD concurred with the RPD's assessment that Mr. Thopke had not established his personal or national identity based on the testimony and documents that he had submitted.

[24] With respect to the RIC, the RAD found that the Professor's opinion regarding the issuance of identity documents in China was very subjective, and did not identify the sources on which it was based. The RAD chose to ascribe greater weight to the official laws of China, which outline the procedures and requirements for obtaining RICs. Given that the process described by Mr. Thopke for obtaining his RIC did not conform to this process, the RAD did not accept the authenticity of the document.

[25] The RAD rejected Mr. Thopke's claim that the RPD erred by not taking his specific circumstances into account when assessing the evidentiary value of his Indian identity documents. It found that the fact that he lied to Indian authorities in order to obtain the documents meant that those documents could not be relied on to establish his identity.

[26] The RAD also did not accept the document from the Office of the Representative of Nepal as establishing Mr. Thopke's identity. The RAD noted that the document was not an official government document, and that it had an inconsistent format. The RAD further noted that Mr. Thopke's birthday is recorded on the document as "12-16", and that it was reasonable to expect that his full date of birth would be recorded since the document was intended to be used for identification purposes. The RAD also found that the fact that pencil was used to record certain information on the document raised the possibility that it may have been tampered with.

[27] Lastly, the RAD rejected Mr. Thopke's argument that he had established his identity through his sworn testimony. The RAD found that Mr. Thopke failed to direct the RAD to portions of his testimony before the RPD that proved his identity.

## V. Analysis

[28] The RAD's assessment of the evidence tendered to establish an applicant's identity is reviewable on a standard of reasonableness: *Wang v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 969 at para. 22, [2011] F.C.J. No. 1191; *Liu v. Canada (Citizenship and Immigration)*, 2012 FC 377 at para. 8, [2012] F.C.J. No. 392.

[29] The question in this application is thus whether it was reasonable for the RAD to find that Mr. Thopke had not established his identity through the documents that he provided and his oral testimony.

[30] Mr. Thopke has not challenged the finding that the *hukou* that he had provided was not authentic, nor has he challenged the finding that the Green Book could not be relied on to establish his identity due to the discrepancies between the information on the face of the document and his testimony. Mr. Thopke has also not challenged the negative credibility findings that were made with respect to his claim that his family had been able to obtain a RIC on his behalf even though they had told Chinese authorities that he had died in 2003 or 2004.

[31] As a consequence, I am left with the RPD's finding that Mr. Thopke tendered a false document to prove his identity, as well as a document with reliability issues to support his refugee claim. I am also left with the RPD's negative credibility findings of his testimony as to how Mr. Thopke had allegedly obtained his RIC.

[32] Mr. Thopke, does, however, challenge the RAD's findings with respect to the evidentiary value of the Professor's evidence regarding the issuing of identity documents in China. He also challenges the RAD's treatment of the document from the Office of the Representative of the



Dalai Lama in Nepal, and its treatment of his Indian identity documents. He makes three arguments in support of his claim that the RAD's treatment of this evidence was unreasonable.

[33] First, Mr. Thopke submits that the RAD used the fact that he admitted to lying in order to obtain his Indian identity documents to question the credibility of his evidence regarding the other identity documents that he had submitted in support of his claim. Mr. Thopke argues that the RAD erred in this regard, as his sworn testimony should have been presumed to be true:

*Maldonado v. Minister of Employment and Immigration* (1979), [1980] 2 F.C. 302 at 305, [1979] F.C.J. No. 248 (C.A.). See also *Wang*, above; *Mohmadi v. Canada (Citizenship and Immigration)*, 2012 FC 884, [2012] F.C.J. No. 1074; *Tran v. Canada (Citizenship and Immigration)*, 2013 FC 1080, [2013] F.C.J. No. 1193.

[34] Second, Mr. Thopke argues that the RAD ignored portions of the Professor's biography that showed that he had relevant expertise that qualified him to offer an opinion as to whether Chinese officials have discretion in issuing identity documents in accordance with regional conditions.

[35] Third, Mr. Thopke argues that he was not given an opportunity to respond to the RAD's concern that the document issued by the Office of the Representative of the Dalai Lama in Nepal was not reliable because it had entries on it in both pen and pencil.

[36] I cannot accept these submissions.

[37] First, the presumption that an applicant's testimony is true is not absolute: it is rather a rebuttable one that can be rebutted when there is good reason to doubt the veracity of an applicant's allegations: *Maldonado*, above at 305.

[38] In this case, the RAD had before it the unchallenged findings of the RPD that the *hukou* tendered by Mr. Thopke was not authentic, and that there were reliability issues with his Green Book. The Refugee Protection Division had also made an adverse credibility finding with respect to Mr. Thopke's testimony as to how his family obtained a RIC in 2010, which had not been challenged before the RAD. These negative findings raise concerns about his overall truthfulness, and with respect to the reliability of his evidence with respect to his other identity documents.

[39] Furthermore, the RAD's reasons confirm that it independently assessed each of the documents that had been provided by Mr. Thopke to establish his identity in light of his testimony and the country condition evidence. The RAD did not accept documents where the information they contained was inconsistent with Mr. Thopke's own testimony, or where the country condition evidence raised concerns as to the plausibility of his claims. This was an entirely reasonable approach to evaluating the evidence.

[40] Second, even if I were to accept that the RAD erred in finding that the Professor was not qualified to give an opinion as to how RICs can be obtained in China, the evidence that he provided just shows that national directives regarding the issuing of RICs are not always followed or can vary by region. This evidence does not, however, suggest that Chinese citizens do not have to physically present themselves to Chinese officials in order to obtain this form of identification. The RAD was, moreover, entitled to assign greater weight to the procedure for issuing RICs prescribed under Chinese law than to the opinion of the Professor.

[41] Third, I am not persuaded by Mr. Thopke's argument that the RAD erred in its assessment of the letter from the Office of the Representative of the Dalai Lama in Nepal

because he was not given an opportunity to respond to the RAD's concerns about the document's inconsistent format and pen and pencil entries.

[42] It is clear from the RPD's decision that Mr. Thopke was on notice that the integrity of this document was in question as a result of the fact that some entries on it had been made in pen and others in pencil. Indeed, he made submissions to the RAD that the RPD's rejection of the document because of the pen and pencil entries was unreasonable. The RAD considered Mr. Thopke's submissions, but concluded that the fact that some entries on the document were made in pencil gave rise to concerns as to its authenticity, in light of the fact that the document would likely be used for official purposes. The RAD was further concerned that the fact that some entries were made in pencil raised the possibility that the document may have been tampered with. These findings were reasonably open to the RAD on the record before it, and Mr. Thopke has not established that the RAD committed a reviewable error in its treatment of this document.

## **VI. Conclusion**

[43] Mr. Thopke has thus failed to show that it was unreasonable for the RAD to find that he had failed to establish his identity in support of his claim for refugee protection. As a consequence, his application for judicial review is dismissed. I agree with the parties that the issues in this case are fact-specific and do not raise a question for certification.

**JUDGMENT IN IMM-4057-16**

**THIS COURT'S JUDGMENT is that:**

1. This application for judicial review is dismissed.

"Anne L. Mactavish"  
\_\_\_\_\_  
Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4057-16

**STYLE OF CAUSE:** YESHI THOPKE v THE MINISTER OF CITIZENSHIP  
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**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 4, 2017

**JUDGMENT AND REASONS:** MACTAVISH J.

**DATED:** MAY 30, 2017

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