

Federal Court



Cour fédérale

Date: 20170705

Docket: IMM-5084-16

Citation: 2017 FC 656

Ottawa, Ontario, July 5, 2017

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

JIAN HUI CHEN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant, Mr. Jian Hui Chen, is a Chinese citizen who claimed refugee status in this country because he feared prosecution from Chinese authorities for participating in a Christian house church in China. He also fears because of his religious practice in Canada if he were to be returned to his country of origin (*sur place* claim). The applicant is seeking from this Court that it quashes the Refugee Appeal Division decision rejecting his refugee claim under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] In effect, the applicant is challenging the decision of the RAD to confirm the decision of the Refugee Protection Division [RPD]. The decision under review concludes that the applicant was not a genuine Christian in China and he was not being pursued by the Chinese authorities for being involved in illegal religious activities or for disturbing the social peace. The RAD also dismissed the *sur place* claim which was based on his religious practice in Canada. There is, in the view of the RAD, no evidence of a persuasive nature that he would come to the attention of Chinese authorities due to his activities in Canada.

[3] Given that the decision of the Refugee Appeal Division [RAD] is the one that is subject to a judicial review application, the only remedy, if any, would be to return the matter to the RAD for a redetermination.

I. The facts

[4] The applicant was introduced to a Christian house church in October 2013, following experiencing personal difficulties. The applicant claims that he was baptized in January 2014.

[5] In February 2014, the applicant noticed that someone was taking pictures of him as he was distributing religious leaflets with a friend. A few weeks later, on February 25, 2014, six or seven police officers came to his home while he was sleeping. While there appears to have been an altercation, the applicant's mother intervened which allowed the applicant to escape without the police seeing him.

[6] The applicant went into hiding thereafter. He was advised by his family that the Public Security Bureau [PSB] returned to his house looking for him; they would have left a summons with his parents. He was being accused of being involved in illegal religious activities.

[7] The applicant fled China with the assistance of a smuggler. He said he exited China on his passport and used a Hong Kong passport to travel to an English speaking country, which he was not able to identify, before arriving in Toronto on April 25, 2014. He does not know the name he was using on the fraudulent passport. According to the Canada Border Services Agency [CBSA], the applicant arrived in Toronto on a flight coming from Hong Kong. Two weeks later, on May 6, 2014, the applicant made his refugee claim. According to the applicant, he has attended church in Canada since May 2014 and has read the Bible during that time.

[8] The RPD heard the respondent in May and June 2016. In essence, the RPD did not believe the story told by the applicant. It declared the determinative issue to be credibility.

[9] On appeal to the RAD, the finding of lack of credibility was confirmed. The RAD followed the decision of the Federal Court of appeal in *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 [*Huruglica*] which found that the appeal from a RPD decision is done on the basis of the correctness standard. The RAD does not defer to the RPD and comes to its own conclusions.

[10] As did the RPD, the RAD concluded as follows:

- (a) It is not credible that the appellant was a genuine Christian in China;

- (b) It is not credible that the appellant is wanted by the PSB for being involved in illegal religious activities and for disturbing the social order; and
- (c) It is not credible that the appellant is a genuine Christian in Canada.

[Para 8 of the RPD's decision]

[11] Out of numerous findings in support of the lack of credibility of the applicant, the applicant made four arguments before the RAD. They are:

- a) It was not implausible that the applicant did not remember the name of the English-speaking country he transited through because this assumes that airport had signage in Chinese characters and the language spoken was Mandarin;
- b) It was not implausible that the applicant did not remember the name on the Hong Kong passport because he used it two years ago and it was taken away from him by the smuggler when he entered Canada;
- c) The RPD erred in finding the applicant's religious practice in Canada was not genuine because of its credibility findings respecting his practice in China;
- d) The RPD erred in according little weight to the reverend's letter supporting the applicant's involvement in his church in Canada in view of his position in the church and the firsthand knowledge that it had of the applicant's religious practice.

[12] The RAD found that the version of events found in the basis on claim document filed by the applicant was not consistent with his testimony before the RPD. The same discrepancies and inconsistencies noted by the RPD were found to exist by the RAD. These inconsistencies are material. Thus, the testimony about the events of February 25, 2014 spoke of five or six neighbours being at his home when the Chinese authorities arrived. That was not to be found in the basis of claim [BOC] document. The applicant did not state that he was chased by police officers, but rather that he was able to "sneak out" of the house when they did not pay attention

to him. The BOC made reference to only one further visit by the Chinese authorities following the attempt to arrest him on February 25, 2014; in his testimony, the applicant was found as embellishing his version by indicating that the authorities returned to his home about three times, instead of the one time in his BOC.

[13] The RAD agreed with the RPD that the explanations given by the applicant as to how the PSB knew of his address were convoluted. Indeed, the address on the summons did not match the addresses that he listed in his documentary evidence. It seems that he was located by the PSB at his parents' home, which is not on his government issued identification.

[14] The RAD also conducted its own examination of the summons ("*chuanpiao*") and it found it to be inconsistent with the sample summons that is found in the documentary evidence. Furthermore, the RAD also noted that article 78 of the *Criminal Procedure Law of the People's Republic of China* (2012 Amendment) provided that a warrant was required in order to arrest the applicant and no evidence suggested that a warrant was presented when the PSB came to arrest the applicant on February 25, 2014. Thus, in the view of the RAD, the summons was not a genuine document.

[15] With respect to the *sur place* claim, the RAD agreed with the analysis done by the RPD.

It wrote:

[26] The RPD stated that it considered the totality of the evidence and although he possessed knowledge of Christianity and he provided a certificate of baptism from the Living Stone Assembly church in Toronto, it did not necessarily mean that he is a genuine Christian. The RPD gave little weight to a letter from Reverend Ko from the Living Stone Assembly in support of

whether or not the Appellant is a genuine Christian. The letter states that the Appellant had an interest in studying Bible classes and attends Sunday service regularly. He also volunteers with the church and has made donations. Rev. Ko stated that, when he first met the Appellant, he asked a few Christian questions, and he could give him the correct answer, so he trusted that he is a real Christian. The RPD points out that Rev. Ko does not explain what questions were asked of the Appellant and what other methodology, if any, he used to determine whether or not the Appellant is a real Christian. The RPD did not find that correctly answering a few questions about Christianity to be indicative of whether someone is genuine or not in their beliefs.

The RAD made the further comment that the reverend's letter stated that "the police raided the Appellant's house church and six members were caught. This was never mentioned by the Appellant in any of his evidence. He stated that the PSB came to his house and attempted to arrest him, allegedly, for distributing Christian flyers" (para 27).

[16] The gist of the decision on the *sur place* claim is found at paragraph 29 of the decision and it reads:

[29] The RAD finds that the credibility findings can be imported into its assessment of the Appellant's *sur place* claim [*Jiang, Sumei v. M.C.I.*, (F.C., no. IMM-13-12), Zinn, September 11, 2012, 2012 FC 1067]. Having found the Appellant's story of persecution by the PSB not to be credible, there is no reason to believe that he is now a genuine Christian follower. The letter from Reverend Ko does not overcome the other findings. There is no persuasive evidence that he would come to the attention of Chinese authorities due to his activities in Canada.

II. Standard of review

[17] Whilst the appeal of a decision made by the RPD is largely governed by a standard of correctness, the judicial review application of that appeal is governed by the usual standard of

reasonableness (*Huruglica*, para 35, *Ghauri v Canada (Citizenship and Immigration)*, 2016 FC 548, para 22, *Ghamooshi v Canada (Citizenship and Immigration)*, 2016 FC 225, para 15).

[18] Flows from that standard of review that this Court must show deference to the findings made by the RAD. The RAD's decision must be outside of the acceptable possible outcomes in view of the facts and the law. Indeed, reasonableness is concerned with the existence of justification, transparency and intelligibility within the decision-making process. Accordingly, it is for the applicant to discharge the burden and to satisfy the Court that the outcome reached by the RAD is not one of the possible acceptable outcomes as opposed to merely arguing there is another outcome, which the applicant would of course prefer. It would also be possible to establish unreasonableness if the decision lacks justification, transparency and intelligibility within the decision-making process.

III. Arguments and analysis

[19] In my view, the credibility findings made with respect to the applicant with respect to the events that were alleged to have taken place in China are not disturbed as being unreasonable. The applicant on the judicial review application challenged the decision of the RAD concerning the summons which was left by the PSB. The applicant suggests that the findings are speculative. On the contrary, I find that finding to be reasonable within the meaning of *Dunsmuir v New-Brunswick*, 2008 SCC 9, [2008] 1 SCR 190. At any rate, there is ample evidence that the credibility of this applicant was correctly assessed by the RPD and the RAD. Merely challenging the decision on the basis of the comments made with respect to the original summons amounts to

very little if compared to the rest of the evidence which, on this record, is not challenged by the applicant.

[20] The focus of the applicant's argument is rather on the *sur place* claim.

[21] A *sur place* claim can be made based on the claimant's actions while outside his country of origin. Once the RAD has assessed the claimant's evidence relating to the *sur place* claim, the evaluation of the genuineness of the claim can be considered in light of the credibility findings related to the original events (*Canada (Citizenship and Immigration) v Sellan*, 2008 FCA 381, 384 NR 163, at para 3; *Sheikh v Canada (Minister of Employment and Immigration)*, [1990] 3 FCR 238, 112 NR 61 (FCA) at para 8; *Zhou v Canada (Citizenship and Immigration)*, 2015 FC 5, at para 23; *Jiang v Canada (Citizenship and Immigration)*, 2012 FC 1067, at paras 27-28).

[22] A situation remarkably similar to the one in this case occurred in *Li v Canada (Citizenship and Immigration)*, 2012 FC 998 [*Li*]. It appears that the same church was involved in both cases. The approach taken in *Li* by my then colleague, Justice Mary Gleason, and with which I fully agree, stresses the burden that rests on an applicant's shoulder. I reproduce paragraphs 28 to 31. They encapsulate an examination of the standard that is to be applied, together the circumstances of a *sur place* claim:

[28] As noted, the reasonableness standard of review is an exacting one and prevents a court from substituting its opinion for that of the RPD. As I have already stated, so long as the tribunal's reasons are understandable and the result is one that is rational and supportable in light of the facts and the applicable law, a court should not overturn an inferior tribunal's decision under the reasonableness standard of review. Application of this test to the RPD's determination that the applicant's beliefs were insincere leads to the

conclusion that the decision must be maintained because the reasons the RPD offered were understandable and the result it reached is supportable in light of the facts and applicable law.

[29] More particularly, the burden of establishing the sincerity of his beliefs rested with the applicant. The Board's determination that he had not discharged this burden was based on its assessment of the applicant's credibility: the fact that he had obviously fabricated a story about what occurred in China, had lied during his testimony before the Board and had offered no convincing proof of a conversion experience in Canada. Apart from the pastor's letter, the baptismal certificate and the photographs, there was no other evidence offered by the applicant to support his claim to be a true Christian. The Board was in no way obliged to accept these documents as proof of the sincerity of the applicant's religious beliefs, especially in light of the applicant's lack of credibility and earlier fraudulent attempt to enter Canada. In this regard, I endorse the comment of Justice Pinard in *Jin* (cited above at para 24) at para 20, that:

...it would be absurd to grant a *sur place* claim every time a pastor provides a letter attesting to an applicant's membership in his church.

[30] The applicant argues that his case is distinguishable from *Jin* and *Wang* (cited above at para 24) because there, unlike here, the claimants' knowledge of the religion they claimed to adhere to was found to be lacking. No such finding was made by the Board in this case, and, indeed, the panel member expressed himself satisfied with the applicant's knowledge of Christianity during his questioning of the applicant at the hearing. Counsel argues that in the absence of lack of knowledge of Christianity, it was unreasonable for the Board to find him not to be a sincere Christian because that finding, in effect, is based on nothing more than the applicant's improper motive in joining the Living Stone Assembly church.

[31] I disagree and find the attempt to distinguish the decisions in *Jin* and *Wang* to be unconvincing. While, as noted above, the motive and sincerity findings made by the Board in this case are intertwined, the Board's determination that the applicant lacked sincerity was additionally premised on the Board's assessment of the applicant's credibility, the fact that he lied under oath and offered no convincing evidence to explain why his practice of Christianity in Canada should be viewed any differently from his fraudulent claim to have practiced Christianity in China. In light of these factors, the Board's conclusion was reasonable.

[23] It is not so much that the fact that the applicant, because his story in China is not believed, could not be found to be a practicing Christian in Canada. It is rather that the credibility findings with respect to events in China continue to be part of the analysis even in the *sur place* claim. As put by Justice Gleason in *Li*, it cannot be that “a dishonest applicant would need only to join a church and study the religion to advance a *sur place* claim” (para 32). On judicial review, the applicant must show that the decision under review is unreasonable. Given that his story of persecution in China was less than credible, it was certainly reasonable for the RAD to require a high degree of proof of his sincerity about his religious belief and the danger he would face if going back to his country of origin.

[24] Reasonableness is an exacting standard of review which is not satisfied by merely alleging an error of law or of fact. The applicant must rather show that the conclusion reached by the RAD, which accords with the conclusion of the RPD, was not one of a number of possible, acceptable outcomes. Such has not been shown on this record.

[25] As a result, the judicial review application must be dismissed. There is no question to be certified pursuant to section 74 of IRPA.

JUDGMENT in IMM-5084-16

THIS COURT'S JUDGMENT is that the judicial review application is dismissed.

There is no serious question of general importance to be stated.

"Yvan Roy"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5084-16

STYLE OF CAUSE: JIAN HUI CHEN v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 22, 2017

JUDGMENT AND REASONS: ROY J.

DATED: JULY 5, 2017

APPEARANCES:

Diane Coulthard

FOR THE APPLICANT

Melissa Mathieu

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Levine Associates
Barristers & Solicitors
Toronto, Ontario

FOR THE APPLICANT

Nathalie G. Drouin
Deputy Attorney General of
Canada
Toronto, Ontario

FOR THE RESPONDENT