

Federal Court



Cour fédérale

**Date: 20170731**

**Docket: IMM-4595-16**

**Citation: 2017 FC 740**

**Ottawa, Ontario, July 31, 2017**

**PRESENT: The Honourable Madam Justice Elliott**

**BETWEEN:**

**DAN LI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant is a national of China who sought refuge in Canada on the basis that the Chinese Public Security Bureau [PSB] went to his house to arrest him for engaging in Falun Gong practices after he escaped in a raid on the house church he attended. He seeks judicial review of a decision made by the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada. The RPD found that the Applicant was neither a Convention refugee nor a person in need of protection under sections 96-97 of the *Immigration and Refugee*

*Protection Act, SC 2001, c 27 [IRPA]*. The RPD also found that there was no credible basis for the Applicant's claims, precluding an appeal to the Refugee Appeal Division.

[2] The RPD questioned the Applicant about his understanding of Falun Gong practices. It also questioned him about leaving China with his own biometric passport, which apparently was obtained by someone else on his behalf after the PSB began to look for him. The RPD also questioned the Applicant about travelling by train to his friend's house after the PSB raided the house church. All answers provided by the Applicant were found to be not credible based on inconsistencies with country condition documents.

[3] The Applicant submits that the reasons of the RPD do not refer to the human smuggler he used to obtain his passport and if more attention had been paid to the presence of a human smuggler, then the RPD could have believed his claim. He says the RPD acknowledges that fraudulent documents can be obtained in China and officials can be bribed, so the reasoning employed by the RPD that they do not believe he escaped using his own passport is contradictory. The Applicant also points to other determinations made by the RPD, all of which amount to asking the Court to re-weigh the evidence.

[4] The Applicant's primary focus and argument is that the no credible basis finding cannot stand because there was only one real credibility finding made against the Applicant, involving a discussion as to whether the applicant or his wife handed documents over to arrange to obtain his new passport. Counsel argued that all the findings made against the Applicant were based on a weighing of the evidence which resulted in the RPD preferring the country condition documents

over the Applicant's testimony. Counsel submits that without negative credibility findings, there is nothing upon which to make a no credible basis finding.

[5] The Respondent submits that preferring the country condition documents over the Applicant's testimony is a credibility finding. As the only evidence presented at the RPD hearing was the testimony of the Applicant — no letters, witnesses or other evidence was proffered — a credibility finding made against the Applicant results in there being no credible evidence remaining. For a finding of no credible basis to be overturned, there must be some evidence which, if believed, is capable of supporting the claim.

[6] In *Rahaman v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89

[*Rahaman*], the certified question which the Court of Appeal was to answer was this:

Is a simple finding that a refugee claimant is not a credible witness sufficient to trigger the application of subsection 69.1(9.1) [of the now-repealed *Immigration Act*, RSC 1985, c I-2]?

[7] The test that was in subsection 69.1(9.1) of the *Immigration Act* is essentially the same as the present wording of subsection 107(2) of the *IRPA*: if there is no credible or trustworthy evidence on which the RPD could have made a favourable decision on the claim for refugee protection, then it shall state in its reasons for the decision that there is no credible basis for the claim.

[8] The Court of Appeal answered the certified question in the affirmative saying, at paragraph 52:

Whether a finding that a refugee claimant is not a credible witness triggers the application of subsection 69.1(9.1) depends on an assessment of all the evidence in the case, both oral and documentary. In the absence of any credible or trustworthy evidence on which each Board member could have determined that the claimant was a Convention refugee, a finding that the claimant was not a credible witness will justify the conclusion that the claim lacks any credible basis.

[9] Prior to answering the certified question, the Court of Appeal made several statements concerning the proper interpretation of the phrase “no credible basis”:

- (1) the Board is to have regard to all the evidence before it which includes the claimant’s oral submissions and any documentary evidence or other oral testimony;
- (2) a no credible basis finding may only be made if there was no credible or trustworthy evidence on which the Board could (emphasis in original) have upheld the claim;
- (3) if the only evidence linking the claimant to the alleged persecution is the claimant’s oral testimony and the claimant is not found to be credible, there will be no credible or trustworthy evidence to support the claim;
- (4) country reports are not normally a sufficient basis on which the Board can uphold a claim because they are not claimant-specific;
- (5) if there is some (emphasis in original) credible or trustworthy evidence a no credible basis finding is not precluded if that evidence is insufficient in law to sustain a positive determination of the claim.

*Rahaman* at paras 27-30

[10] Over the years since *Rahaman*, these statements or principles have been applied many times in this Court. While there have been some refinements made to the statements, the essence remains that if the Applicant’s testimony is not credible, then there must be the presence of some credible or trustworthy evidence sufficient to sustain a positive determination of the claim if a no

credible basis finding is to be avoided. It is still the case that country condition documents alone do not meet that test.

[11] Before I can assess whether the no credible basis finding was reasonable, I must first determine whether the RPD reasonably concluded that the Applicant's testimony was not credible. There were clear contradictions between the Applicant's testimony and the country condition documents relied on by the RPD. While more than one conclusion could have been drawn from these contradictions, I find that the conclusions drawn by the RPD—that the PSB was never looking for the Applicant and he was never a genuine Falun Gong practitioner—were defensible on the evidence before it and were sufficiently explained so as to meet the requirements of the reasonableness standard of review. Having found the Applicant to face no threat on return to China, it was reasonable for the RPD to conclude that the Applicant is neither a Convention refugee nor a person in need of protection.

[12] The next question is whether the RPD reasonably determined that there was no credible basis for the Applicant's claim. On this matter, the Applicant has failed to convince me that any credible or trustworthy evidence was ignored by the RPD. His testimony was not believed. Apart from the country condition documents referred to by the RPD, which the RPD preferred to the Applicant's testimony, no evidence to support the claim was presented to the RPD other than his marriage certificate to his wife. That document clearly does not support his refugee claim in any way. Without any remaining evidence to support the Applicant's claim, the RPD's no credible basis finding was clearly in line with the Court of Appeal's guidance in *Rahaman* and the decision as a whole is reasonable.

[13] The application for judicial review is therefore dismissed. There is no question for certification on these facts.

**JUDGMENT IN IMM-4595-16**

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

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

“E. Susan Elliott”

---

Judge

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

**DOCKET:** IMM-4595-16

**STYLE OF CAUSE:** DAN LI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JULY 25, 2017

**JUDGMENT AND REASONS:** ELLIOTT J.

**DATED:** JULY 31, 2017

**APPEARANCES:**

Peter Lulic FOR THE APPLICANT

Rachel Hepburn Craig FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Peter Lulic FOR THE APPLICANT  
Barrister and Solicitor  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario