

Federal Court



Cour fédérale

Date: 20180424

Docket: IMM-4361-17

Citation: 2018 FC 444

Ottawa, Ontario, April 24, 2018

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

MING ZHANG

Applicant

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP**

Respondent

JUDGMENT AND REASONS

(delivered orally from the Bench on April 19, 2018)

[1] The Applicant has applied for judicial review of a decision [the Decision] of the Refugee Protection Division [RPD] in which it concluded that he is not a *Convention* refugee or person in need of protection. The Decision is dated September 27, 2017. This application is brought

pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

[2] The Applicant is a 28 year-old citizen of China from Fujian Province who was employed as a customer manager for China Telecom Corporation.

[3] In or around 2013 the Applicant met two individuals while playing online games. They became friends and thereafter started sharing messages and online articles. The articles commented on unfair policies of the Chinese government, including land expropriation policies. In March 2016, the Applicant started commenting about expropriations on online discussion boards. He was interested in the topic because his uncle's land had recently been expropriated. Later that month the Applicant's accounts were deactivated on the websites he had visited.

[4] On April 15, 2016 the Applicant's mother told him that members of the PSB had visited their family home and accused him of forwarding anti-government messages online. The Applicant's two online friends were arrested and he went into hiding for two months while a smuggler made his travel arrangements.

[5] On June 19, 2016 the Applicant travelled from China to Vancouver using his genuine passport, which contained a Canadian Temporary Resident Visa obtained by the smuggler. The Applicant made a refugee claim at the port of entry on June 20, 2016.

I. The RPD Decision

[6] The Applicant testified that he disposed of his passport on the plane to Canada. He explained that he did so because he was afraid that he was at risk of being returned to China by Canadian immigration authorities if the passport was found in his possession. The Applicant stated that he was speculating that the PSB might have informed Canadian officials that they were seeking to arrest him. The RPD rejected this explanation as “internally inconsistent with the claimant’s testimony about being able to exit China undetected while using his own passport thanks to the arrangements made by a smuggler.” The RPD concluded that the failure to provide a valid passport without a reasonable explanation impugned the claimant’s overall credibility.

[7] The Applicant testified that his exit from China on June 19, 2016 was made in two stages. First he took a domestic flight from Xiamen to Guangzhou. The smuggler was present and helped him check in in Xiamen but was not present in Guangzhou. The Applicant testified however, that the smuggler told him which specific kiosk to use at each airport to pass through without the knowledge of the PSB. The RPD noted documentary evidence talks about the efficiency of China’s Golden Shield Program and that authorities control the exits of citizens wanted by the PSB through the Policenet system. However, the RPD also recognized that there is evidence that airport officials can be bribed. Nevertheless, the RPD concluded:

The panel finds that if the claimant were sought by the PSB, he would have been identified in the Golden Shield database and on the passenger manifests while attempting to exit China using his own passport, and concludes that, on a balance of probabilities, the claimant is not wanted by the PSB. The panel therefore draws a negative inference regarding the claimant’s overall credibility.

[8] The Applicant testified that the PSB initially made 2-3 visits a week to his home, but the frequency had recently been reduced to twice a week. He stated that the PSB showed the arrest warrant to his mother but did not leave it with her. The RPD noted that the documentary evidence indicates a summons “may” be left with an adult family member if the person being sought is absent. The RPD accepted there may be variations in police practices in different areas. However, the RPD concluded that because the PSB showed a sustained interest in the Applicant over a period of fifteen months, the PSB “would” have left a summons.

[9] The Applicant obtained his Resident Identity Card (RIC) from a friend on June 7, 2016, while he was in hiding from the PSB. The Applicant testified that his friend picked it up from his home after it arrived there by mail. However, the Applicant was not believed because country condition documents showed that an applicant must pick up an RIC in person. RICs are not put in the mail.

[10] The Applicant submitted a handwritten letter from his uncle. It explained that the Applicant had been a frequent visitor to the uncle’s home before it had been expropriated. However, since the letter made no reference to the Applicant’s online activities or to his pursuit by the PSB, the RPD assigned it no evidentiary weight.

[11] The letter from the employer did refer to the PSB but it was assigned no weight because it could have been fraudulent.

II. Issues

[12] The issues are whether the RPD's negative credibility findings are reasonable.

III. Discussion

A. *The Passport*

[13] The Applicant's explanation for his destruction of his passport was, as the RPD concluded, inconsistent with his description of his departure from China with a smuggler's help. If the smuggler bribed officials in certain kiosks in both airports as the Applicant suggested, the Golden Shield would not have been triggered and the PSB would not have been aware that the Applicant had left China.

[14] In these circumstances it made no sense for the Applicant to justify the destruction of his passport on the basis that the PSB might contact Canadian authorities and ask for his return. Accordingly, in my view, the RPD's rejection of the Applicant's explanation for the destruction of his passport was reasonable.

[15] However, the RPD also concluded that, since he used his own passport, the Golden Shield would have caught the Applicant. The RPD reached this conclusion notwithstanding the Applicant's evidence that he was directed to certain kiosks in both airports by the smuggler and the country condition evidence which showed that airport officials can be bribed. The RPD was aware that the Golden Shield could be defeated by these means. In these circumstances, absent a finding that the Applicant's evidence was not credible, the RPD's conclusion that the PSB was

not looking for the Applicant, which goes to the heart of the Applicant's claim, is unreasonable. This issue is determinative.

B. *The Summons*

[16] The RPD again disregarded the country condition evidence when it dealt with this topic. The evidence said that a summons "may" be left and the Applicant testified that it had been shown to but not left with his mother. However, the RPD concluded that a summons "would" have been left given the high level of PSB interest in the Applicant. This was speculative and not justified by the country condition documents. It was therefore unreasonable.

C. *The Resident Identity Card*

[17] In my view, it was reasonable based on the country condition documents for the RPD to conclude that the Applicant was not credible when he testified that the RIC had been mailed to his home.

D. *The Uncle's Letter*

[18] The RPD's complete rejection of this letter was unreasonable. While it did not speak about the PSB or the Applicant's online activities, it did corroborate the rationale for his interest in the Chinese government's expropriation policies and it should have been accepted for that purpose.

E. *The Employer's Letter*

[19] The China Telecom letter was rejected because it could have been fraudulent. The RPD was concerned that it was a single page typed in black ink with an ink stamp which the RPD described as a "rather rudimentary security feature and therefore easily produced by anyone." The letter confirmed the PSB's interest in the Applicant and also supported his evidence that he had gone into hiding. In my view, the rejection of this letter as a fraud was unreasonable. The letter was clearly one page in length because it was only two paragraphs and the black ink was presumably the author's choice between black and blue. It was signed and on letterhead. The mere fact that the stamp was not as secure as it could have been was not in my view, a reasonable justification for entirely ignoring the letter.

IV. Conclusion

[20] The Decision will be set aside because the RPD unreasonably did not consider the letters from the uncle and the employer and because the RPD unreasonably concluded that the PSB was not seeking the Applicant.

V. Certification

[21] No question was posed for certification for appeal.

JUDGMENT IN IMM-4361-17

THIS COURT'S JUDGMENT is that the Application is allowed. The Decision including the finding that there was no credible basis for the claim is set aside and the claim is to be re-determined by another panel of the RPD.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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