

Federal Court



Cour fédérale

Date: 20181025

Docket: IMM-5314-17

Citation: 2018 FC 1075

Ottawa, Ontario, October 25, 2018

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

**YOUSHI YANG, YAOHONG YANG, ZHANTU
YANG, YAOZHONG YANG**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The refugee claims of the Principal Applicant, Youshi Yang [PA], and her three sons, Yaohong, Zhantu, and Yaozhong [Applicants], were denied by the Refugee Protection Division [RPD] who found that they did not establish their identity as citizens of China. The RPD found the PA's explanations for the absence of identity documents were not plausible. For the reasons

that follow, this judicial review is granted as the plausibility findings of the RPD are not reasonable.

Background

[2] The PA claims that in June 2011, following the death of her husband, she started to practice Falun Gong with a group in China. Apparently, in October 2012, the Public Security Bureau [PSB] raided her Falun Gong practice group, following which she went into hiding. She alleges that the PSB visited her parents' house to arrest her.

[3] At some time after the alleged raid, she and her children left China using false Hong Kong passports. Upon their arrival in Canada in December 2012, they filed refugee claims on the basis that they are at risk of persecution in China because of the PA's practice of Falun Gong.

RPD Decision

[4] In the RPD decision of October 31, 2017, the determinative issue was credibility regarding their identity and the authenticity of their identification documents.

[5] The PA gave explanations for not providing her Resident Identity Card [RIC], driver's licence, and marriage licence. The PA explained that her RIC is still with the smugglers, as her parents failed to get it back from them when they were paid the final amount owing. She testified that her parents failed to collect her RIC as they were too nervous and too old (65 years

old). She also said that her parents did not remember that they needed to collect her RIC until she telephoned them sometime later inquiring about it.

[6] The RPD found the PA's explanation about the RIC to be "neither credible nor plausible" as, according to the RPD, the sole purpose of her parents meeting with the smugglers was to collect the RIC. Additionally, the RPD found that the explanations regarding her parents' age or that they forgot to collect the RIC were not credible or plausible.

[7] With respect to her driver's licence, the PA stated that her parents could not locate it and that she did not think to bring it with her when she left China. When asked about her marriage licence, she said that she did not have it as she "did not go back home." The RPD held that these answers did not provide a reasonable explanation. In particular, the RPD found her answer about the absence of the marriage licence was unresponsive.

[8] The RPD determined that the documents provided, a Hukou, three birth certificates, and her husband's death certificate, were not authentic. The RPD remarked that none of the documents included a photo and that the documents were "in pristine condition, indicating lack of use". The RPD also noted that China has a healthy market for fraudulent documents and that the PA had the ability and willingness to purchase and use fraudulent documents (based on the admission that she entered Canada using false passports).

[9] The RPD found that the birth certificate of the youngest son was fraudulent as it was missing the bar code. Although the PA indicated that the birth certificates were "genuine and

provided by the hospital”, the RPD made a “severe negative inference” on the authenticity of all of the documents based on this finding. No forensic testing was performed on the birth certificate.

[10] The RPD gave no weight to the identification documents provided and determined that the Applicants did not establish their identities under section 106 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and Rule 11 of the *Refugee Protection Division Rules*, SOR/2012-256 [Rules]. As identity was not established, the RPD did not consider the *sur place* claim.

Issues

[11] Although the Applicants raise a number of issues with the RPD decision, it is the RPD’s approach to the credibility and plausibility findings which are dispositive of this judicial review.

Analysis

Standard of review

[12] The parties agree that a reasonableness standard of review is applicable to findings of credibility. Reasonableness “is concerned mostly with the existence of justification, transparency, and intelligibility within the decision-making process” and “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

Are the RPD’s credibility and plausibility findings reasonable?

Relevant Legislation

[13] Section 106 of the *IRPA* and Rule 11 of the *Rules* provide as follows:

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 documentation.

Documents

11 The claimant must provide acceptable documents establishing their identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they did not provide the documents and what steps they took to obtain them.

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.

Documents

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

[14] These provisions require that applicants produce acceptable documents to establish their identity or to provide reasonable explanations for the absence of such documents. In this case it was the PA's explanations for the lack of these documents that the RPD found implausible.

[15] It is accepted that determining identity is at the core of the RPD's expertise and the Court should be reluctant to intervene in such decisions (*Toure v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1189 at para 32). As explained by Justice Gleason in *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319 at para 48:

[48] [...] In my view, provided that there is some evidence to support the Board's identity-related conclusions, provided the RPD offers some reasons for its conclusions (that are not clearly specious) and provided there is no glaring inconsistency between the Board's decision and the weight of the evidence in the record, the RPD's determination on identity warrants deference and will fall within the purview of a reasonable decision. In other words, if these factors pertain, the determination cannot be said to have been made in a perverse or capricious manner or without regard to the evidence.

[16] While deference is due to the RPD, the RPD must nonetheless provide a decision with "clear and unmistakable" reasoning on findings of implausibility (*Mohammed v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1379 at para 27 [*Mohammed*]).

[17] In this case, the PA submits that she made reasonable efforts to obtain identification documents and gave reasonable explanations for not being able to produce those documents. She argues that it was unreasonable for the RPD to find that she was not credible and she argues that the RPD erred when it made plausibility findings despite her explanations as to why she was not able to produce the documents.

RIC

[18] The PA stated that she did not have the RIC because her parents forgot to collect it from the smuggler when they met with him to make the final payment. She explained that they were

nervous and that her parents did not realize their error until she called them asking about the RIC. The RPD found this explanation “neither credible nor plausible.” However, the RPD did not provide any reasons for making this finding.

[19] Additionally, the PA testified that her parents may have forgotten about the RIC because they were happy that she arrived to Canada. This explanation was not addressed by the RPD.

[20] In *Valtech v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7, the Court held that findings of implausibility can only be made in the clearest of cases:

[7] A tribunal may make adverse findings of credibility based on the implausibility of an applicant's story provided the inferences drawn can be reasonably said to exist. However, plausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant. A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu. [Citation omitted.]

[21] The RPD did not give any reason why it thought the PA's explanations were “outside the realm of what could reasonably expected” and therefore implausible and not credible.

[22] The RPD disregarded the PA's explanation about her parents' age without any foundation for its conclusion. The RPD stated in its decision that the PA did not give any evidence to the mental health of her parents. However a review of the transcript shows that the RPD did not inquire about the PA's parents' mental health during the hearing. The RPD only asked the PA whether she considered 65 years of age to be old.

[23] The RPD did not rely upon any evidence to show that the PA's explanation was implausible. This is not in keeping with the obligations on the RPD when making implausibility findings and is therefore not reasonable.

Driver's Licence

[24] In the decision, the RPD implied that the PA was asked twice about her driver's licence and gave two different answers. The RPD stated: "The principal claimant was asked if she tried to bring her driver's licence. She replied that her parent could not find it and when asked again, indicated that she never thought to bring it." However, the transcript shows that the PA was asked two different questions as follows:

MEMBER: Okay what about, did you have a drivers licence in China.

CLAIMANT: Yes.

MEMBER: Where is it?

CLAIMANT: Oh, my parents could not find it.

MEMBER: Why did you not bring it with you?

CLAIMANT: I had never thought of that to bring it with me because I came out from my friend's place because I was already in my friend's place at that time.

[25] Considering she was asked two different questions, her answers are not inconsistent. On the one hand she explains that she did not bring her driver's licence because she was hiding at a friend's place, and on the other hand she explains that she could not provide the document

because her parents could not find it. When considered in their temporal context, these are not inconsistent answers.

[26] Although a tribunal can draw a negative inference when a witness does not provide consistent answers or when an applicant claims that they cannot find the document (*Qiu v Canada (Minister of Citizenship and Immigration)*, 2009 FC 259 at paras 8, 11), that was not the situation here.

[27] It is therefore unreasonable for the RPD to draw a negative inference when there was no inconsistency. Further, the RPD did not address the substance of the PA's answer, namely that her parents could not find the driver's licence. The RPD unreasonably mischaracterizes the questioning that took place regarding the driver's licence.

Marriage Certificate

[28] The RPD drew a negative inference when the PA did not answer the questions about her marriage certificate. However, the PA admitted that she did not ask her parents to send her the marriage certificate, showing a lack of effort to obtain the document. The RPD did not consider this in its reasons which it should have in the overall assessment of whether efforts were made to obtain documents. The RPD should have considered the answer and given reasons for its decision to accept or dismiss the answer (*Narasingham v Canada (Minister of Citizenship and Immigration)*, 2004 FC 294 at para 24. See also: *Ipala c Canada (Ministre de la Citoyenneté et de l'Immigration)*, 2005 FC 472 at paras 20-22).

[29] It is unreasonable for the RPD to not consider testimony made by the PA even if the information given does not directly answer the question. Therefore it is unreasonable for the RPD to draw a negative inference based on the marriage certificate questions without considering the answer.

Conclusion

[30] For the above reasons, this judicial review is granted. The PA also claims that the RPD erred by not considering the *sur place* claim. However as this judicial review is being granted, I decline to address this issue.

JUDGMENT in IMM-5314-17

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted. The decision of the RPD is set aside and the matter is remitted for redetermination by a different panel; and
2. No question of general importance is proposed by the parties and none arises.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5314-17

STYLE OF CAUSE: YOUSHI YANG, YAOHONG YANG, ZHANTU YANG,
YAOZHONG YANG v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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