

Federal Court



Cour fédérale

Date: 20190117

Docket: IMM-855-18

Citation: 2019 FC 69

Ottawa, Ontario, January 17, 2019

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

YUNCHUN WU

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, YunChun Wu, is a 32 year old citizen of China. This is his second application for judicial review. He alleges that he is a member of the Falun Gong and says he will be persecuted if he is returned to China. In a redetermination decision dated January 25, 2018, the RAD dismissed his appeal. For the reasons stated below, I am setting aside the RAD redetermination decision.

II. **Facts**

[2] The Applicant, Mr. YunChun Wu, is a 32 year old citizen of China. He states that his stress about violating China's family planning law has led to headaches, insomnia and dizziness. Although he saw doctors, his condition did not improve, and his evidence is that doctors did not record the visits in his medical booklet. After a friend told him that the Falun Gong would help improve his health issues, he joined the Falun Gong on October 12, 2013.

[3] On January 15, 2014, the Public Safety Bureau (the "PSB") raided his underground Falun Gong practice group. Although he was not present when the raid occurred, the PSB found out he was a Falun Gong practitioner and began searching for him. On September 2, 2014, the Applicant left China with the help of a smuggler and came to Canada. He made a refugee claim due to fear of persecution in China on the ground of his identity as Falun Gong practitioner.

[4] On May 19, 2016, the RPD determined the Applicant is neither a Convention refugee nor a person in need of protection. The Applicant appealed to the RAD, but on September 6, 2016 the RAD upheld this decision.

[5] On April 20, 2017 the Applicant's first judicial review hearing took place. In a decision dated May 1, 2017 Justice Campbell set aside the RAD decision and ordered a differently constituted panel to reconsider the Applicant's claim in *Wu v Canada (Citizenship and Immigration)*, 2017 FC 420. In that decision, Justice Campbell found that the RAD's conclusion was not based on the evidence, and that it had unreasonably rejected a letter in the evidence based on a prior negative credibility finding.

[6] The redetermination of the Applicant's appeal occurred on January 25, 2018. In reaching its redetermination decision, the RAD agreed with the RPD that the Applicant's testimony is inconsistent with his Basis of Claim ("BOC") which itself contained significant omissions. The RAD also noted the RPD allowed the Applicant an opportunity to explain his inconsistent testimony.

[7] In regards to the Applicant's arguments about the summons, the RAD found some had merit. But upon an independent review of the Applicant's summons, the RAD noticed inconsistencies between the Applicant's summons and a sample on the record. The RAD also found that based on Article 82 of the Public Security and Administrative Punishment Law of the People's Republic of China, a coercive summons can be issued in cases of non-compliance. Since the Applicant alleged that the PSB made regular visits to his home to look for him and failed to report for an interview, the RAD found it was reasonable to expect that the PSB would have issued a coercive summons. The RAD notes the availability of fraudulent documents in China, and finds the summons is inauthentic on a balance of probabilities.

[8] The RAD also finds that the Applicant's medical condition is a central element of the claim, as it is what led him to join the Falun Gong. However, the RAD determines that the Applicant's testimony about his medical problem was inconsistent, evolving, and lacking in credibility. Despite documentary evidence related to family planning that confirms that patients in China keep track of medical visits in a booklet, the Applicant's own medical visits were missing from his booklet. Although the Applicant first submitted that his ailments were serious and he sought medical help from both western and traditional doctors, the RAD finds his testimony is contradictory because he also states his condition was not serious enough to record

in the booklet and he paid cash for the doctor visit. As a result, the RAD again agrees with the RPD, and finds the Applicant's argument about why he has not submitted medical documents must fail.

[9] Based on the different details between his BOC and testimony, the PSB raid is another area the RAD determined that the Applicant gave inconsistent testimony. On a balance of probabilities, the RAD finds "that the [Applicant] has learned a scenario and a number of facts in order to advance his claim for refugee protection."

[10] Although the Applicant alleged he continued to practice Falun Gong in Canada, the RAD finds that the evidence of this is limited. In particular, only a letter describing his first three months in Canada was submitted. Therefore, in a decision dated January 25, 2018, the RAD's redetermination decision upheld the initial RPD decision and dismissed the appeal.

III. **Issues**

[11] The sole issue in this judicial review is whether the RAD erred in its credibility analysis.

IV. **Standard of Review**

[12] The standard of review of the RAD's decision is reasonableness (*Zhang v Canada (Citizenship and Immigration)*, 2017 FC 491 at para 10 [*Zhang*]).

V. **Analysis**

A. *Did the RAD err in its credibility analysis?*

[13] The Applicant argues the RAD's negative credibility finding is unreasonable. For instance, the Applicant argues that the RAD used irrelevant evidence about family planning to establish that his medical visit would have been recorded in his medical book. The Applicant also argues his testimony about his medical visits is not contradictory, as he consistently testified that his medical problems (headaches and trouble sleeping) are small issues that did not warrant them being recorded in his medical booklet. The Applicant further submits that he cannot control his doctor's decisions, so it is wrong to impugn his credibility on the basis of his doctor's actions (*Lin v Canada (Citizenship and Immigration)*, 2014 FC 683 at para 21).

[14] The Respondent argues that this Court has heard many other cases where applicants had medical visits recorded in their medical booklets, such as *Sui v Canada (Citizenship and Immigration)*, 2016 FC 406 at para 20. At the hearing, the Respondent also argued that the RAD relied on portions of the Family Planning National Documentation Package ("NDP") that did not appear to be specific to Family Planning.

[15] I agree with the Applicant that the RAD relied on irrelevant evidence. Specifically, an unrelated NDP about family planning is an unreasonable basis for the RAD to find that "the documentary evidence confirms that every patient in China has their own personal medical record that they retain and take to each visit." Simply, NDP evidence about family planning does not establish that the Applicant's ailments (headaches and problems sleeping) would similarly require a medical booklet entry.

[16] On these facts, the RAD's error affects the overall decision; the Applicant's medical problems are directly related to his credibility about his Falun Gong practice in China. In fact, the Applicant states that his medical problems are what led him to join the Falun Gong and the RAD itself found that his medical condition is "central to the core elements of the claim." As a result, the RAD's credibility finding is based on an unreasonable review of the evidence that affects the core elements of the claim. This renders the decision unreasonable, and it must be set aside.

VI. **Certified Question**

[17] Counsel for both parties were asked if there were questions requiring certification. They each stated that there were no questions arising for certification and I concur.

VII. **Conclusion**

[18] This application for judicial review is granted.

JUDGMENT in IMM-855-18

THIS COURT'S JUDGMENT is that:

1. The decision under review is set aside and the matter referred back for redetermination by a differently constituted panel.
2. There is no question to certify.

"Shirzad A."

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-855-18

STYLE OF CAUSE: YUNCHUN WU v THE MINISTER OF CITIZENSHIP,
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