

Federal Court



Cour fédérale

Date: 20190122

Docket: IMM-2204-18

Citation: 2019 FC 90

Ottawa, Ontario, January 22, 2019

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

YANYIN LIANG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant is a citizen of China who seeks judicial review of a decision of the Refugee Protection Division [RPD] finding that she is not a Convention refugee or a person in need of protection. The Applicant's claim for protection is on account of her practice of Falun Gong. For the reasons that follow, I am granting this judicial review as the decision of the RPD is not reasonable.

Background

[2] The Applicant claims that she began to practise Falun Gong to help deal with depression following a failed relationship in August 2011. While in China she claims to have practised Falun Gong daily and weekly with a group.

[3] On September 2, 2012, the Applicant claims her Falun Gong practice group was raided by the Public Security Bureau (PSB). The Applicant was able to escape though the back door as a lookout stationed at the front of the house alerted the leader of the group that the PSB was coming. The Applicant went into hiding at her cousin's house.

[4] While the Applicant was in hiding, the PSB went to her parents' home on September 5, 2012 to look for her. A summons was left for her at that time. Her parents also advised her that the PSB returned to their home and asked why she did not go to their office.

[5] With the aid of a smuggler, the Applicant left China on her own passport and arrived in Canada in November 2012, at which time she made a claim for refugee protection.

[6] Since she has been in Canada, the Applicant says that she has continued to practise Falun Gong daily and has practised weekly in public with a group.

RPD Decision

[7] In the decision of April 25, 2018, the RPD rejected the Applicant's claim and concluded, on a balance of probabilities, that the Applicant had never practised Falun Gong in China or in Canada and has never been wanted by the Chinese authorities for practising Falun Gong. This conclusion was based upon five findings, namely: 1) Her escape story is not plausible or credible; 2) The summons she filed was not genuine; 3) she did not adequately address how she was able to leave to leave China with her genuine passport in light of the Golden Shield; 4) her knowledge of Falun Gong was not commensurate with someone who claimed to have read *Zhuan Falun*, had 12 years of formal education and had been practising it for over 6 years; and 5) No credible evidence was presented to establish a *sur place* claim.

[8] The RPD found that her escape story was not plausible or credible. The RPD determined that the PSB would have surrounded the building rather than run in the front door so that the practitioners could run out the back door.

[9] The RPD found that the Applicant did not address how she was able to leave China with her genuine passport when she was wanted by the PSB and in light of the Golden Shield. The RPD considered conflicting case law addressing how some individuals were able to get past the Golden Shield, such as the decision in *Huang v Canada (Citizenship and Immigration)*, 2017 FC 762 [*Huang*], but found the Applicant's description of her flight from China was inconsistent with the information in the national documentation evidence.

[10] With respect to her knowledge of Falun Gong, the RPD noted the Federal Court jurisprudence which cautions against determining religious identity on the basis of knowledge or lack thereof. However, the Board noted that “unlike other religions in general, which are faith-based, the objective evidence establishes that knowledge is an important component of Falun Gong.” The Applicant’s knowledge of Falun Gong was not commensurate to an individual who had read *Zhuan Falun*, been practising for over 6 years, and had 12 years of formal education.

[11] The Applicant’s *sur place* claim was dismissed as the evidence presented, in the form of two letters and photographs depicting her practising Falun Gong in Canada did not overcome the credibility concerns and did not prove on a balance of probabilities that the Applicant was a genuine Falun Gong practitioner. The two letters that she proffered stating that the Applicant publicly practised Falun Gong in Canada were given little weight as the authors of the two letters were not present to attest to the veracity of their statements. The photographs were also given little weight in part because they had been taken in a public place.

Issues

[12] The Applicant raises various issues with the RPD decision, however the RPD’s assessment of the following issues are dispositive of this judicial review:

- I. Did the RPD reasonably consider the summons?
- II. Did the RPD reasonably consider the Applicant’s ability to leave China?

Standard of Review

[13] The standard of review for the RPD's findings and assessment of evidence is reasonableness (*Liu v Canada (Citizenship and Immigration)*, 2018 FC 933 at para 9 [*Liu*]).

[14] A reasonable decision is one that demonstrates justification, transparency, and intelligibility and falls within the range of possible, acceptable outcomes defensible in fact and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

Analysis

I. Did the RPD reasonably consider the summons?

[15] The Applicant argues that the RPD's conclusion that the summons was fraudulent was not reasonable. The reasons provided by the RPD for concluding this were simply that there was a plethora of fraudulent documents in China. There was no analysis of the summons.

[16] The Court in *Lin v Canada (Minister of Citizenship and Immigration)* 2012 FC 157 [*Lin*] at paragraph 53 states that the general availability of fraudulent documents in China is not a sufficient reason to doubt the authenticity of all documents that emanate from that country. *Lin* further states at paragraph 55 the following:

It may be that fraudulent documents are widely available in the PRC. However, this does not mean that every document that comes out of the PRC is necessarily fraudulent. The RPD was obliged to examine and weigh the actual documents in front of it, rather than simply rejecting them out of hand.

[17] At a minimum, the RPD was required to examine and weigh the summons, even if inauthentic documents may be widely available (see also *Liu* at para 13).

[18] In this case, the RPD's outright dismissal of the authenticity of the summons was not reasonable.

II. Did the RPD reasonably consider the Applicant's ability to leave China?

[19] The Applicant argues that it was unreasonable for the RPD to conclude that it would not have been possible for her to leave China on her own passport if she was wanted by the PSB. The Applicant also argues that she was able to leave without detection because she was working with a smuggler who was able to circumvent the Chinese security mechanisms.

[20] The objective country evidence documents note the potential for bribery and corruption in China and note that the Golden Shield system is not infallible. The RPD relied on the *Huang* decision that states that issues of bribery, smugglers, and corruption are to be considered when assessing a claimant's ability to leave China using their genuine passport. In *Huang*, Justice Russell indicated at paragraph 68 that, where there is sufficient evidence of corruption and a bribery scheme, a reasonable decision must explain why these factors could not have reasonably overcome the Golden Shield.

[21] In this case, while the RPD considered the strengths of the Golden Shield security system, it also recognized that smuggling a fugitive out of China was possible. However, what the RPD did not explain was why, in this case, the smuggler could not have reasonably overcome

the Golden Shield and assisted the Applicant out of the country. Instead, the RPD states that it found that arguments relating to bribery and corruption “make little difference” to the case.

[22] The RPD also found that the Applicant’s description of leaving China was not consistent with the information in the documentary evidence. The RPD found that the national documentation package indicates that she could not have successfully left China by showing her passport only once or twice in the airport. However, this completely disregards the Applicant’s evidence that she relied on a smuggler, the purpose of which would be to bypass security measures. Here the RPD did not state that it disbelieved the Applicant’s account of her exit from China. Therefore, the RPD’s conclusion that a person could not overcome the security system, without considering the Applicant’s explanation as to how she did so, lacks justification.

[23] However, the RPD ultimately determined at paragraphs 10 and 11 of its decision that it was unlikely that the Applicant could have left China on her own passport if she was wanted by authorities, and it was unlikely that she used a smuggler because the RPD doubted the genuineness of her Falun Gong practice. This is clearly circular reasoning on the part of the RPD, with interdependent credibility findings such that it is not possible to determine which findings led to which conclusions. This is not a justified, transparent, or intelligible conclusion.

[24] Given the RPD’s lack of engagement with the summons and its circular reasoning as to how the Applicant left China, I allow this judicial review.

JUDGMENT IN IMM-2204-18

THIS COURT'S JUDGMENT is that:

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

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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