

Federal Court



Cour fédérale

**Date: 20190116**

**Docket: IMM-1382-18**

**Citation: 2019 FC 58**

**Ottawa, Ontario, January 16, 2019**

**PRESENT: The Honourable Madam Justice McDonald**

**BETWEEN:**

**JIAQUAN LIANG**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant seeks refugee protection for fear of persecution in China as a Falun Gong practitioner. He seeks review of a decision of the Refugee Protection Division (RPD) who denied his claim for protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The RPD concluded that the claim was manifestly unfounded. For the reasons that follow, this judicial review is granted as the RPD's overall conclusion that the Applicant's claim was manifestly unfounded is unreasonable.

## **Background**

[2] The Applicant is a citizen of China who says he was introduced to Falun Gong in July 2016 as a way to help him deal with feelings of depression and stress caused by his parents' fighting.

[3] The Applicant claims that in April 2017, the Public Security Bureau (PSB) raided his group practice but he managed to escape. He stayed with his uncle while the PSB was looking for him.

[4] With the assistance of a smuggler, he obtained a United States (US) visa and left China. He entered Canada from the US and made a refugee claim on the basis that he is a target of the PSB because of his practice of Falun Gong.

## **RPD Decision under review**

[5] In the decision of December 11, 2017, the RPD rejected the Applicant's claim finding that he did not adduce any credible or trustworthy evidence. The RPD also concluded that, on the basis of the lack of credible evidence and potentially fraudulent documentation, his claim was manifestly unfounded.

[6] The RPD was satisfied that the Applicant established his identity through his Resident Identity Card, but the RPD drew a negative inference as he was not able to produce other

supporting documents such as his passport or airline tickets. The RPD did not accept his explanation that his smuggler had taken the passport, and the RPD found the Applicant's response that he had thrown away his airline tickets as not credible.

[7] The RPD also found that the Applicant's explanation for his motivation to practice Falun Gong was not credible. He claimed that he had become less stressed by practising Falun Gong, and after he introduced his parents to Falun Gong, he testified that they had less discord. The RPD noted that the Applicant did not mention his parents were Falun Gong practitioners in his Basis of Claim (BOC). The RPD also noted that the Applicant's practice of Falun Gong did not completely stop his parents from fighting. The RPD therefore drew an adverse inference as to the Applicant's general credibility from his demeanor and lack of evidence to establish his motive to practice Falun Gong.

[8] To obtain his US visa, the Applicant testified that he personally attended the US consulate in Guangzhou City, China. The RPD drew an adverse finding from the fact that the Applicant was able to come out of hiding and was willing to risk exposing himself to the PSB by using public transit and by walking in public to reach the US consulate.

[9] Further, the RPD found that the Applicant's evidence of his travel out of China on his own passport was not credible. The RPD noted that Chinese authorities carefully monitor citizens exiting the country and concluded that if the Applicant was wanted by Chinese authorities he would have been apprehended. The Applicant explained that his smuggler lied for him at the customs office. The RPD did not accept this as a credible explanation.

[10] As well, the Applicant testified that his route to Canada was via China to Korea then to the US. The RPD noted a discrepancy in the Applicant's explanation of the countries he travelled through when he left China and therefore did not find his evidence on this point credible.

[11] The RPD did not consider the *sur place* claim since it found that the Applicant was not a genuine practitioner of Falun Gong. The RPD noted that, while he did display some knowledge of Falun Gong, he was "notably hesitating" when reciting the verses of the five exercises. The RPD found that his testimony did not indicate sincerity of belief. The RPD also held that the Applicant did not indicate that he sent "righteous thoughts" until he was prompted about it by the Panel member. The RPD took issue with the fact that the Applicant incorrectly named the basic principle of Falun Gong. While the Applicant stated that the principle was to strengthen the body and health, the RPD asserted that the answer should have been, according to the documentary evidence, "Truthfulness-Compassion-Forbearance".

[12] Finally, the RPD concluded that the copy of the Chinese court summons (*chuanpiao*) produced by the Applicant was fraudulent due to an inconsistency in the location of a Chinese character.

## **Issues**

[13] While the Applicant raises various issues with the RPD decision, the reasonableness of the manifestly unfounded finding is dispositive of this judicial review.

## **Standard of review**

[14] Questions of mixed fact and law on credibility findings and the manifestly unfounded conclusion are considered against the reasonableness standard of review (*Warsame v Canada (Citizenship and Immigration)*, 2016 FC 596 at paras 25-26).

## **Analysis**

Is the manifestly unfounded finding reasonable?

[15] The Applicant argues that the manifestly unfounded finding is not reasonable as it is premised on a series of other conclusions reached by the RPD that are not reasonable and do not go to the core of his claim for protection. In particular, the Applicant raises issue with a number of the negative credibility findings made by the RPD, as well as the conclusion that the tendered summons is a fraudulent document.

[16] The consequences of a “manifestly unfounded” determination are significant as they deny the Applicant an opportunity to appeal the RPD decision and deny an automatic stay of removal. As such, a finding that a claim is manifestly unfounded is subject to a full consideration of all of the evidence (*Rahaman v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89 [Rahaman]). In particular, as *Rahaman* explains at paragraphs 45 to 49, a manifestly unfounded determination cannot be made simply because a board member does not consider elements of the claimant’s narrative or evidence to be credible.

[17] This case is similar to the recent decision of *Yuan v Minister of Citizenship and Immigration*, 2018 FC 755 where Justice Strickland found the RPD's finding that the claim was manifestly unfounded was not reasonable, and summarized her reasoning at paragraph 44 as follows:

And while *Warsame* and *Nanyongo* could be taken to suggest that it was open to the RPD to base its manifestly unfounded finding on its cumulative credibility findings, I confess that I have some concern that, at least in this case, these add up to the claim being clearly fraudulent, as opposed to having no credible basis. In any event, here the RPD did not base its manifestly unfounded finding on the basis of its cumulative negative credibility findings.

[18] Similarly, here the RPD does not appear to have reached the manifestly unfounded determination based upon cumulative negative credibility findings, but instead based upon finding the tendered summons was fraudulent.

### **Summons**

[19] The Applicant argues that it was not reasonable for the RPD to conclude that the summons produced by the Applicant was fraudulent because of the misplacement of one Chinese character on the document.

[20] The RPD focused its assessment of the summons on this one character. The rest of the summons appears to be in proper form but the RPD made no assessment of the whole of the document, particularly as to whether this character goes to the form or the substance of the summons (*Ma v Canada (Citizenship and Immigration)*, 2018 FC 163 at paras 22-24). This is not a reasonable consideration of a document which purports to be a summons.

[21] The RPD's assessment of the summons was not reasonable and therefore the RPD's reliance on the supposedly fraudulent summons to support the manifestly unfounded conclusion is not reasonable.

### **Assessment of Falun Gong**

[22] The Applicant further argues that the RPD erred in concluding that he was not a genuine Falun Gong practitioner by misinterpreting his motivation to practice.

[23] At paragraph 20 of its decision, the RPD states as follows:

The claimant testified that his motivation to practice Falun Gong was to ameliorate the lack of sleep caused to him by his parents' constant quarrelling. I asked the claimant Falun Gong [*sic*] made his parents stop fighting. He answered no. I then asked the claimant how was he able to sleep if his parents were still fighting. The claimant testified that Falun Gong transformed his entire person, meaning his heart was not burdened as before.

[24] The finding of the RPD is that the Applicant's practice of Falun Gong did not stop his parents from fighting and thus his motivation was not credible. This is an illogical conclusion. The evidence of the Applicant was that Falun Gong helped him to deal with his stress in relation to his parents fighting, not to stop them from fighting. This is a reasonable explanation and in keeping with the comments in *Liu v Canada (Citizenship and Immigration)*, 2015 FC 1140 where Justice Southcott took issue with the finding of a board member who rejected the applicant's submissions about the health benefits of Falun Gong. Justice Southcott wrote at paragraph 38, "However, whether the Applicant has actually achieved a health benefit from his

religious practice cannot logically be part of an analysis as to whether his beliefs are genuinely held.”

[25] While I agree with the Respondent that the RPD does not have to produce a perfect decision, it does have to render a decision which is justifiable and transparent (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47). The RPD’s conclusion as to the Applicant’s motive to practice Falun Gong is not justifiable and therefore is not reasonable.

[26] Accordingly this judicial review is granted.



**JUDGMENT in IMM-1382-18**

**THIS COURT'S JUDGMENT is that** this judicial review is granted and there is no question for certification.

"Ann Marie McDonald"

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Judge

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

**DOCKET:** IMM-1382-18

**STYLE OF CAUSE:** JIAQUAN LIANG v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 25, 2018

**JUDGMENT AND REASONS:** MCDONALD J.

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