

Federal Court



Cour fédérale

Date: 20190429

Docket: IMM-2953-18

Citation: 2019 FC 537

Ottawa, Ontario, April 29, 2019

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

ZHAOYONG LI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Zhaoyong Li, arrived in Canada from the United States in early July 2011, and a few weeks later he claimed refugee protection. The Refugee Protection Division [RPD] of the Immigration and Refugee Board rejected his claim in a decision dated June 4, 2018, because he had not provided adequate documentation in support of his personal and national identity as a citizen of China.

[2] The Applicant has now applied under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [IRPA], for judicial review of the RPD's decision. He asks the Court to set aside the decision and return the matter for redetermination by another member of the RPD.

I. Background

[3] The Applicant is 53 years old and says he is a citizen of China. In 1993, with the assistance of a smuggler, he travelled to the United States where he made an unsuccessful asylum claim. While in the United States, the Applicant joined the China Democracy Party in 2009, and in November 2010 he began to practice Falun Gong which he believed would help resolve pain in his shoulder.

[4] The Applicant left the United States and entered Canada on July 1, 2011. He made his application for refugee protection in Canada on July 21, 2011.

II. The RPD's Decision

[5] After summarizing the Applicant's narrative, the RPD identified several issues: "the claimant's personal and national identity, the credibility of the claimant's allegation concerning his violation of the family planning policy, his practice of Falun Gong and his pursuit by authorities in China because of that practice, and, the potential sur place nature of his claim."

[6] The RPD found that the determinative issue was the Applicant's identity:

[15] A determinative issue in this claim is the claimant's personal and national identity. On a balance of probabilities, for the following reasons, the panel finds that claimant has not provided adequate documentation in support of his personal identity and national identity as a citizen of the People's Republic of China. Further, the panel finds that the claimant has not made sufficient efforts to obtain such documents.

[7] The Applicant provided a civil mediation certificate (concerning his divorce), photocopies of his *Hukou*, marriage certificate, China Democracy Party membership card, an Illinois photo ID card, an employment authorization card, a United States social security card, and a notarial copy of his birth certificate.

[8] The RPD found that none of these documents contained security features as would be the case for a Resident Identity Card [RIC] or a passport. The Applicant testified that he had given the RIC to the smuggler who was going to return it when his wife paid the smuggler's fee, and that, although the fee had been paid, the RIC was not returned to his wife. When asked what efforts he had made to get the RIC back, the Applicant testified that his wife "did not even ask to get it back, it did not occur to her that I needed it." When asked if he had followed up with his wife, the Applicant replied that he did not as it was difficult to find the smuggler. The RPD found it was "reasonable to expect that the claimant would have made some serious efforts to obtain this important document to verify his identity and nationality."

[9] With respect to the absence of a passport, the RPD asked the Applicant if he had one and where it was, to which he replied that he did not. The RPD found it was "reasonable to expect

that for the claimant to travel around the United States by plane, he would have to provide proper identification documents such as a passport or official government identification.”

[10] Speaking to a document which the Applicant did provide, his *Hukou*, the RPD observed that there are many fraudulent documents available in China. The RPD quoted a United States consular official stationed in southern China who stated that documents from China: “Are presumed to be fraudulent unless proven otherwise.” The RPD did not accept the Applicant’s explanation as to why he provided a photocopy of this document: that his lawyer had moved and could not be contacted. The lack of security features due to the photocopy coupled with the high probability of fraudulent documents led the RPD to give little weight to the *Hukou* in corroborating the Applicant’s residency in China at the material time.

[11] The RPD concluded by referencing this Court’s decision in *Uwitone v Canada (Citizenship and Immigration)*, 2012 FC 61, and stating that: “In situations where a claimant has not established his identity, a negative conclusion as to credibility will almost inevitably be drawn, and can, in and of itself, be dispositive of the claim.” Finding that the Applicant had not established his identity, the RPD did not address the other issues it had identified.

III. Analysis

[12] The foremost issue raised by this application for judicial review is whether it was reasonable for the RPD to find that the Applicant had not established his identity. The assessment of proof of identity is a question of fact and therefore reviewed on the standard of

reasonableness (*Matingou-Testie v Canada (Citizenship and Immigration)*, 2012 FC 389 at para 18).

[13] The reasonableness standard tasks the Court with reviewing an administrative decision for “the existence of justification, transparency and intelligibility within the decision-making process” and determining “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). Those criteria are met if “the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes” (*Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

A. *The Parties’ Submissions*

(1) Applicant

[14] According to the Applicant, the RPD is generally considered not to have any special expertise in relation to the validity of foreign identity documents. These documents must be presumed to be valid, the Applicant says, unless there is some evidence before the RPD suggesting otherwise. In the Applicant’s view, the lack of security features does not mean a document is fraudulent, and a finding that one identity document is untrustworthy is insufficient grounds to find every other document also untrustworthy.

[15] The Applicant contends that the lack of a passport or RIC was not determinative because there were other documents which could prove his identity. It was inappropriate, the Applicant says, for the RPD to use the alleged lack of security features in a *Hukou* when there was no evidence that such security features would be expected. The Applicant points out that the photocopy of the Applicant's *Hukou* does have security features in the form of official seals from the issuing authority. Other than the *Hukou*, the Applicant complains that the RPD did not assess his other identity documents as they did not contain security features such as those found in a RIC or passport.

[16] The Applicant faults the RPD because it failed to assess other probative identity documents in evidence, including his birth certificate and documents from United States immigration authorities indicating his identity as a Chinese citizen. In the Applicant's view, this failure to look at the totality of the evidence, by not addressing all relevant evidence that might bear on his identity, was unreasonable.

(2) Respondent

[17] According to the Respondent, once the RPD has concluded that identity has not been established, there is no need for it to further analyze the remainder of the evidence and the claim, and the Applicant's failure to prove his identity effectively undermines any claim of a well-founded fear of persecution. The Respondent rebuts the Applicant's argument that the RPD cannot determine the validity of foreign documents, asserting that the RPD has expertise to determine the validity of a foreign identity document because it has exposure to the document as well as the Applicant's testimony surrounding it.

[18] It was reasonable, the Respondent maintains, for the RPD to attach significance to the Applicant's failure to produce a passport or a RIC. In the Respondent's view, it also was reasonable for the RPD to find the Applicant had not established his identity based on his *Hukou* since it was a photocopy and lacked the security features of a RIC or passport; and the documentary evidence disclosed that the *Hukou* is particularly susceptible to fraud and manipulation. The Respondent says the Applicant's arguments about the other documentation are essentially a request for this Court to reweigh the evidence, which is not the purpose of judicial review; and, contrary to what the Applicant contends, the findings of the United States immigration judge did not contradict those of the RPD and, as such, it was not required to discuss this.

B. *The RPD's Decision is Unreasonable*

[19] It is well-established that the RPD is required to consider and assess all documents submitted by an applicant in support of their identity. For example, in *Teweldebrhan v Canada (Citizenship and Immigration)*, 2015 FC 418, the Court found that:

[19] Notwithstanding that the RPD was entitled to set aside the presumption of validity of Mr. Teweldebrhan's identity documents, it was still required to at least consider and assess the authenticity and probative value of each of those documents, as well as the affidavits and the letters that he submitted in support of his application ...[citations omitted]. The RPD's failure to do so rendered unreasonable its determination that Mr. Teweldebrhan had not established his identity on a balance of probabilities.

[20] To similar effect is *Jiang v Canada (Citizenship and Immigration)*, 2007 FC 1292 at para 3, where the Court stated: "as a matter of law, identity findings are to be based upon the totality of the evidence." The jurisprudence requires the RPD to consider and assess each identity

document submitted by an applicant even if it rejects other identity documents (*Katsiashvili v Canada (Citizenship and Immigration)*, 2016 FC 622 at paras 25 and 26; and *Denis v Canada (Citizenship and Immigration)*, 2018 FC 1182 at para 46).

[21] In this case, although the RPD identified the documents the Applicant had submitted to support his identity as a Chinese national, it unreasonably failed to assess or engage with these documents.

[22] The Applicant's employment authorization card clearly stated his country of birth as "China, People's Republic." His China Democracy Party membership card contained a photograph of the Applicant and stated his place of birth as "Fujian." The notarized copy of the Applicant's birth certificate stated he was "born on September 25, 1965 at LianJiang County, FuJian Province." The Applicant's *Hukou* indicated that his place of birth and origin was "LianJiang County." The order of the United States immigration judge rendered on August 5, 1998, denying the Applicant's asylum claim, referred to him as a "native and citizen of the People's Republic of China."

[23] The RPD's expectation that, for the Applicant to travel around the United States by plane he would have to provide proper identification documents such as official government identification, cannot be justified and is unreasonable in the face of the Illinois ID Card containing a photograph of the Applicant. In this regard, I agree with the Applicant's submission at the hearing of this matter that this card would be adequate for domestic air travel.

[24] A final fault with the RPD's decision concerns its assignment of little weight to the *Hukou* to corroborate the Applicant's identity. In this regard, the Court's observations in *Chen v Canada (Citizenship and Immigration)*, 2015 FC 1133, are equally appropriate in this case:

[11] With respect to the issue of security features, there is no evidence in the record, nor does the RPD cite any, that indicates that the document should have any additional security features. From this I infer that the RPD surmised that the document could be more easily forged than one with greater security features. However, even if true, that is not evidence that this document was fraudulent.

[12] With respect to the observation that fraudulent official documents are widely available in China, the Court reminds the RPD that it has held that the RPD should exercise caution in relying on this factor when reviewing the validity of a document. In *Cheema v Canada (Minister of Citizenship and Immigration)*, 2004 FC 224 at para 7, the Court stated:

The documents may well be forgeries, however evidence of widespread forgery in a country is not, by itself, sufficient to reject foreign documents as forgeries. As the Respondent noted evidence of widespread forgery merely demonstrates that false documentation could be available to the Applicant.

[13] As Justice Russell observed in *Lin v Canada (Minister of Citizenship and Immigration)*, 2012 FC 157 at para 54, if the fact that forged documents are widely available is a valid reason for finding that a foreign document is a forgery then this "would mean that even genuine documents would not be acceptable."

[25] In view of the foregoing deficiencies in the RPD's decision, it must be set aside.

IV. Conclusion

[26] The Applicant's application for judicial review is allowed. The RPD unreasonably failed to assess or engage with the documents submitted by the Applicant to establish his identity as a Chinese national.

[27] Neither party raised a serious question of general importance; so, no such question is certified.

JUDGMENT in IMM-2953-18

THIS COURT'S JUDGMENT is that: the application for judicial review is allowed; the decision of the Refugee Protection Division of the Immigration and Refugee Board rendered on June 4, 2018, is set aside; the matter is returned for redetermination by a different member of the Refugee Protection Division of the Immigration and Refugee Board in accordance with the reasons for this Judgment; and no question of general importance is certified.

"Keith M. Boswell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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