

Federal Court



Cour fédérale

Date: 20190516

Docket: IMM-4384-18

Citation: 2019 FC 731

Ottawa, Ontario, May 16, 2019

PRESENT: Mr. Justice Bell

BETWEEN:

QIUYOU ZHENG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an application under subsection 72 (1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the *IRPA*] in which Qiuyou Zheng [Mr. Zheng] seeks judicial review of a decision dated August 13, 2018 [the Decision] by the Refugee Protection Division [the RPD]. In its decision, the RPD concluded that Mr. Zheng is neither a Convention refugee under section 96

of the IRP, nor a person in need of protection within the meaning of paragraphs 97(1)(a) or (b) of the *IRPA*.

II. Background

[2] Mr. Zheng is a 57-year-old citizen of the People's Republic of China [China] who claims to be a practitioner of Falun Gong.

[3] In June 2010, Mr. Zheng suffered a back injury that, according to him, "changed his life". Following the accident, a doctor recommended back surgery. After learning about the risks associated with the surgery, Mr. Zheng chose not to undergo the procedure. In October 2010, one of his friends [Mr. Gao] introduced him to the practice of Falun Gong. With the help of Mr. Gao, Mr. Zheng began practising Falun Gong exercises at his home. In December 2010, given the positive effects on his health, Mr. Zheng joined a practice group organized by Mr. Gao.

[4] On August 13, 2012, Mr. Zheng learned from his spouse, via a telephone conversation, that Mr. Gao had been arrested by the Chinese Public Security Bureau [PSB] because of his unlawful activities as a Falun Gong practitioner. Mr. Zheng's spouse apparently told him not to return home, not to go to work and to immediately enter into hiding. As a result of the conversation with his spouse, Mr. Zheng boarded a bus to the countryside and hid at his uncle's home. Fearing that his presence would eventually implicate his uncle, Mr. Zheng decided to leave China. Through his uncle, Mr. Zheng was introduced to a smuggler who assisted him in obtaining a visa to leave China. On November 12, 2012, Mr. Zheng left China. He arrived in Canada on November 13 and on November 20, 2012, made a claim for refugee protection.

[5] On November 25, 2012, Mr. Zheng's spouse called to inform him that the PSB had visited their home inquiring about his whereabouts. After informing the PSB that she was unaware of his whereabouts, the PSB apparently warned her, and her son, that they would be punished if they were lying.

[6] Due to alleged harassment by the PSB and the local Resident Committee, Mr. Zheng's son fled to Italy in 2013 and his spouse moved to Shandong Province, China, in 2016. Neither Mr. Zheng's spouse, nor his son, has suffered persecution since their departure from their village.

III. Decision under review

[7] The RPD began its analysis by outlining the issues it considered to be determinative, namely: credibility, specifically whether the Applicant is a genuine Falun Gong practitioner, whether he is wanted by the PSB, and in the alternative, whether he has an Internal Flight Alternative [IFA] within China. Given my conclusion that the RPD made reasonable findings in relation to both Mr. Zheng's practice of Falun Gong and his alleged pursuit by the PSB, I need not address the issue of the IFA.

[8] On the issue of whether Mr. Zheng is a genuine Falun Gong practitioner, the RPD recognized, at the outset, Mr. Zheng's limited education. Regardless, the RPD was not satisfied he is a genuine practitioner of Falun Gong. The RPD reached this conclusion given the following inconsistencies between his testimony and the practice of Falun Gong as set out in the National Documentation Package [NDP]:

- Mr. Zheng explained that the Law Wheel is found throughout his body. However, it is in fact located in one's lower abdomen. Once the RPD pointed this out, Mr. Zheng conceded it is located in his lower abdomen but that the effects are felt throughout the body.
- On the issue of "karma", Mr. Zheng asserted that "the more we practice the more we get". Actually, the opposite is true. The RPD noted that the concept of Falun Gong is to eliminate "karma" by cultivation. In Falun Gong, Karma is not a thing to be acquired. It is something to be eliminated from the body.
- Mr. Zheng had no apparent understanding of the concept of cultivation.
- Finally, the RPD concluded that while Mr. Zheng may have participated in Falun Gong exercises, such as Chi Gong/Qigong, there was no evidence such exercises are a "banned practice in China". Also, Mr. Zheng's assertion that he only practises these exercises when he has time, and rarely in a group, contributed to the RPD's conclusion that he is not a genuine practitioner of Falun Gong.

[9] After finding that Mr. Zheng is not a genuine practitioner of Falun Gong, the RPD undertook an analysis of whether he is sought by the PSB. On this issue, the RPD noted that the PSB did not leave any document, such as a summons, during their alleged visits to Mr. Zheng's home. In light of the documentary evidence available, the RPD was of the view that this was not in accordance with the normal procedure. The RPD considered the lack of a summons, the fact Mr. Zheng left China with a visa in his own name, the fact his spouse lives unmolested in Shandong Province and receives a government pension and the fact his son left China with no difficulties, in arriving at its conclusion he is not being pursued by the PSB. The RPD also

referred to country condition information regarding the effectiveness of the computer network of policing known as the Golden Shield Project, in concluding Mr. Zheng is not sought by the PSB.

[10] The RPD candidly acknowledged there were weaknesses in its observations about Mr. Zheng's ability to leave China with a visa in his own name and the efficacy of the Golden Shield Project given that Mr. Zheng was assisted by a smuggler and given that exit controls were not fully implemented at the time he left China. Regardless, given the totality of the evidence, the RPD reached the following conclusion:

The panel finds that there is no evidence that the claimant is wanted by the PSB. Given the documentary evidence demonstrating the aggressive actions of the Chinese government in pursuing Falun Gong practitioners and their families, the panel finds that the claimant has failed to meet the burden of proof to support his claim that he is wanted by the PSB. [Para 37]

IV. Relevant Provisions

[11] The relevant provisions of the *IRPA* are ss. 96 and 97, which are set out in the attached Schedule.

V. Issues

[12] The only issues to be decided in this case are whether the RPD unreasonably concluded that Mr. Zheng is not a Falun Gong practitioner and whether the RPD unreasonably concluded he is not sought by the PSB.

VI. Analysis

A. *Standard of Review*

[13] It is well-established that the standard of review applicable on matters of credibility and fact finding is that of reasonableness (*Cambara v Canada (Citizenship and Immigration)*, 2017 FC 1019 at para 13; *Scott v Canada (Citizenship and Immigration)*, 2012 FC 1066 [*Scott*] at para 26; *Aguebor v Canada (Minister of Employment & Immigration)* (1993), 160 NR 315, [1993] FCJ No 732 (FCA) at para 4). When reviewing a decision on the standard of reasonableness, the analysis will be concerned with “the existence of justification, transparency and intelligibility within the decision-making process [and also with] 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 [*Dunsmuir*] at para 47; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 [*Khosa*] at para 59).

B. *Mr. Zheng’s Credibility*

[14] Although the RPD concluded Mr. Zheng testified in a credible fashion, it also concluded he lacked credibility with respect to his practice of Falun Gong and his assertion that he is being pursued by the PSB. Mr. Zheng contends the RPD erred by finding him credible, yet lacking credibility in certain matters. With respect, I disagree. The RPD’s observations are not mutually exclusive. One may testify in a credible fashion, yet be disbelieved with respect to assertions essential to one’s claim. Similarly, one may be credible but simply lack proof of the essential elements to be established.

[15] It is trite law that a decision-maker may believe some, all, or none of what a witness says: see, *R. v R.E.M.*, 2008 SCC 51 [*R.E.M.*] at para 65; more generally, *R. v W. (D.)*, [1991] 1 SCR 742 [*W. (D.)*]. I readily acknowledge that both *R.E.M.* and *W.(D.)* are criminal law matters. However, this basic premise of decision-making does not, in my view, conflict with the instructions from the Court in *Hilo v Canada (Minister of Employment and Immigration)* (1991), 130 NR 236, [1991] FCJ No 228 (FCA) that negative credibility findings must be made in clear and unmistakable terms. I find it was reasonable for the RPD to conclude that generally Mr. Zheng testified in a straightforward manner but that his more specific claims regarding his practice of Falun Gong and his alleged pursuit by the PSB lacked credibility. As is evident in the analysis below, the reasons for the negative credibility findings with respect to those two issues were clearly articulated by the RPD.

C. *Reasonableness of finding regarding Falun Gong practice*

[16] The jurisprudence imposes a low bar for refugee claimants seeking protection on religious grounds (*Lin v Canada (Citizenship and Immigration)*, 2012 FC 288 at para 59). This approach is consistent with the Supreme Court of Canada's [SCC] caution in *Syndicat Northcrest v Amselem*, 2004 SCC 47 [*Amselem*]:

[50] In my view, the State is in no position to be, nor should it become, the arbiter of religious dogma. Accordingly, courts should avoid judicially interpreting and thus determining, either explicitly or implicitly, the content of a subjective understanding of religious requirement, "obligation", precept, "commandment", custom or ritual. Secular judicial determinations of theological or religious disputes, or of contentious matters of religious doctrine, unjustifiably entangle the court in the affairs of religion.

[51] That said, while a court is not qualified to rule on the validity or veracity of any given religious practice or belief, or to choose among various interpretations of belief, it is qualified to inquire

into the sincerity of a claimant's belief, where sincerity is in fact at issue: see *Jones, supra*; *Ross, supra*. It is important to emphasize, however, that sincerity of belief simply implies an honesty of belief: see *Thomas v. Review Board of the Indiana Employment Security Division, supra*.

[...]

[53] Assessment of sincerity is a question of fact that can be based on several non-exhaustive criteria, including the credibility of a claimant's testimony (see *Woehrling, supra*, at p. 394), as well as an analysis of whether the alleged belief is consistent with his or her other current religious practices. It is important to underscore, however, that it is inappropriate for courts rigorously to study and focus on the past practices of claimants in order to determine whether their current beliefs are sincerely held. Over the course of a lifetime, individuals change and so can their beliefs. Religious beliefs, by their very nature, are fluid and rarely static. A person's connection to or relationship with the divine or with the subject or object of his or her spiritual faith, or his or her perceptions of religious obligation emanating from such a relationship, may well change and evolve over time. Because of the vacillating nature of religious belief, a court's inquiry into sincerity, if anything, should focus not on past practice or past belief but on a person's belief at the time of the alleged interference with his or her religious freedom. [Emphasis added]

[17] Mr. Zheng contends the RPD failed to assess his sincerity, focusing instead on its own unreliable objective criteria. I readily accept that it is the genuineness of beliefs that matter and not whether those beliefs are theologically sound (*Gao v Canada (Citizenship and Immigration)*, 2015 FC 1139 at para 26). That said, it is reasonable for a decision-maker to expect a rudimentary knowledge of one's faith (*Wang v Canada (Citizenship and Immigration)*, 2018 FC 668 at paras 29-39). In this case, lack of knowledge of the location of the "law wheel", failure to know karma is to be eliminated, not acquired, and failure to understand the concept of cultivation and the role exercises play in reaching different levels of cultivation were properly considered by the RPD. These factors were part of the credibility matrix considered by the RPD. It is not the

Court's role to reassess the evidence for purposes of substituting its own view for that of the RPD (*Khosa*, at paras 59, 61).

[18] The sincerity of Mr. Zheng's beliefs cannot be divorced from his lack of basic knowledge of Falun Gong. The RPD, through its questioning of Mr. Zheng was not seeking an epistemological evaluation of his religious knowledge. It is reasonable to conclude that his answers to some basic questions would influence an assessment of his sincerity. If I were to accept the assertion that the RPD placed too much emphasis on Mr. Zheng's personal knowledge rather than a careful assessment of his "sincerity", I would fall into the trap of hunting for error and looking for a reason to substitute this Court's view for that of the RPD. Reviewing courts must not engage in a treasure hunt for error (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd.*, 2013 SCC 34 at para 54). Furthermore, it would be erroneous to suggest that subjective sincerity cannot be evidenced by objective knowledge. If tribunals are prevented from using objective knowledge to assist in the determination of sincere beliefs, I rhetorically ask, how is a tribunal or court to assess the veracity of someone saying: "I am Falun Gong", "I am Christian", "I am Muslim", "I am Jewish" or any one of hundreds of other faith groups across the planet. While I am not suggesting that objective knowledge is determinative of the question of sincerely held beliefs, it is certainly an evidentiary factor to be considered by the RPD. As such, it is a factor which this Court should avoid re-assessing.

D. *Reasonableness of the conclusion that Mr. Zheng is not sought by the PSB*

[19] The RPD's conclusions regarding a lack of credibility with respect to the issue of pursuit by the PBS cannot be divorced from its finding of a lack of credibility with respect to the practice of Falun Gong. While a finding of lack of credibility with respect to one aspect of the evidence does not necessarily lead to a similar finding with respect to other aspects of the evidence, the issue remains one for the RPD and not for the courts. I harken back to the principle that a decision-maker may believe some, none or all of what a witness says.

[20] Mr. Zheng contends the RPD made implausible credibility findings based upon its erroneous interpretation of country condition documents. Specifically, he says the RPD erred when it suggested that the PSB's failure to leave a summons was inconsistent with PSB procedures. Mr. Zheng points to a lack of country condition evidence in that regard. He also criticizes the RPD for making implausible assumptions about the PSB's potential treatment of Mr. Zheng's spouse and son, if it (the PSB) were truly pursuing him.

[21] With respect to the lack of a PSB summons and the RPD's finding in that regard, I find the following observations of this Court in *Lan Cao v Canada (Citizenship and Immigration)*, 2012 FC 1398 at paragraph 35, to be directly on point:

While the documentary evidence suggests that the PSB's practice with respect to leaving a summons is not uniform, it does not directly contradict the Board's finding. Indeed, given the number of times the PSB was purported to have come knocking at the Applicant's door, and at that of her mother, it was reasonably open to the Board to conclude that a summons would have been left. The mere fact that it was possible for the Board to conclude the opposite does not, in and of itself, render the board's decision on this point unreasonable.

[22] With respect to the issue of retaliation toward, or punishment of, Mr. Zheng's family, recall that his son moved to Italy with no difficulties and his spouse moved to Shandong Province where she was not molested in any way. The lack of ill-treatment of Ms. Zheng in Shandong Province must be considered in conjunction with the fact that she may be easily located given that she receives a government pension.

[23] Essentially, Mr. Zheng disagrees with the RPD's weighing of the evidence. As stated earlier, that is the responsibility of the RPD (*Eker v Canada (Citizenship and Immigration)*, 2015 FC 1226 at para 9). The RPD has vast experience in weighing country condition evidence, including claims involving China and its exit controls. The RPD, not this Court, possesses the expertise in such matters. Its conclusions are owed deference: *Gong v Canada (Citizenship and Immigration)*, 2017 FC 165 at paras 14-18.

VII. Conclusion

[24] I am of the view the RPD decision meets the requirements of justification, transparency and intelligibility and falls within a range of reasonable possible, acceptable outcomes based on the facts and law as required by the jurisprudence (*Dunsmuir*, at para 47).

[25] For the foregoing reasons, the application for judicial review is dismissed.

[26] The parties proposed no question of general importance for certification and none arises from the facts of this case. As a result, no question is certified for consideration by the Federal Court of Appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the Application for Judicial Review is dismissed and no question is certified for consideration by the Federal Court of Appeal.

“B. Richard Bell”

Judge

SCHEDULE

Immigration and Refugee Protection Act, S.C. 2001, c. 27

Convention Refugee

96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country

Person in need of protection

97(1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would

Loi sur l'immigration et la protection des réfugiés, L.C. 2001, ch. 27

Définition de réfugié

96 A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner

Personne à protéger

97(1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence

subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate

habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des

health or medical care.

soins médicaux ou de
santé adéquats

Person in need of protection

Personne à protéger

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualifié de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4384-18

STYLE OF CAUSE: QIUYOU ZHENG v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 18, 2019

JUDGMENT AND REASONS: BELL J.

DATED: MAY 16, 2019

APPEARANCES:

Georgina Murphy

FOR THE APPLICANT

David Joseph

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Korman and Korman LLP
Toronto, Ontario

FOR THE APPLICANT

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT