

Federal Court



Cour fédérale

Date: 20190722

Docket: IMM-5154-18

Citation: 2019 FC 948

Ottawa, Ontario, July 22, 2019

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

JINGUI ZHOU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Ms. Jingui Zhou [Ms. Zhou] claims to be a Christian. On October 9, 2011 Ms. Zhou fled China. On November 8, 2011 she sought asylum in Canada from alleged religious persecution in her home country. The Refugee Protection Division [the RPD] concluded her faith was not genuine. Based upon that finding, and others, the RPD rejected her claim. Ms. Zhou now seeks

judicial review pursuant to subsection 72 (1) of the *Immigration and Refugee Protection Act, SC 2001, c 27* [the *IRPA*]. For reasons set out below, I grant the application for judicial review.

II. Background

[2] Ms. Zhou is a 48-year-old citizen of the People's Republic of China [China] who claims she has a well-founded fear of persecution based on her Christian religion.

[3] Ms. Zhou claims that in and around 2008, her husband started to gamble and drink heavily. In, or about, July 2010, Ms. Zhou's friend [Ms. Zeng] learned of her situation. Ms. Zeng suggested that she seek help from God. After discussion about how God had worked in the life of her friend, Ms. Zhou claims she started worshipping at Ms. Zeng's underground Christian church in or about September, 2010. Interestingly, Ms. Zhou admitted a reluctance to join the underground church as she feared for her safety. Ms. Zeng assured her that the church had taken precautions to ensure the safety and privacy of members. Those assurances allayed Ms. Zhou's concerns.

[4] Ms. Zhou asserts that on June 12, 2011, the Chinese Public Security Bureau [PSB] raided the underground church. Ms. Zhou contends that immediately prior to the raid, the congregation received a notice from a lookout. According to Ms. Zhou the group fled. She was able to take refuge at her aunt's house. She claims two others, including Ms. Zeng, were arrested.

[5] Numerous other details such as advice received by Ms. Zhou from her husband, the delivery of a summons or arrest warrant at her home, Ms. Zhou's departure from China via a smuggler and visits by the Public Security Bureau to Ms. Zhou's home in China form part of the tapestry of this case. The RPD made negative findings regarding many of those details. That said, I find it unnecessary to address those issues given my view that the RPD made serious flaws in its early assessment of Ms. Zhou's credibility. In my view, those initial flaws infected all other credibility findings made by the RPD.

III. Decision Under Review

[6] The RPD began its analysis by considering Ms. Zhou's allegation regarding her religious conversion to Christianity. The RPD found the account of her conversion to be improbable due to the concomitant risk of arrest. It opined:

[10] The claimant testified that her friend introduced her to Christianity after her husband began to drink heavily and gamble. The claimant indicated that the friend began to pray for her and tell her stories about God and Jesus Christ. The friend also told the claimant how God could help her as he had helped her father who had been suffering from a serious illness after she had prayed to him. The claimant then decided to attend her friend's underground house church.

[11] The panel recognizes that there is no accepted or standard process for the development of faith or religious conversion, and that not all adherents undergo a dramatic conversion experience. Nonetheless, the panel finds the claimant's account of her conversion to, and embracing of, Christianity superficial and improbable, given the concomitant risks of arrest.

[7] In addition, the RPD was of the view that the purported raid on Ms. Zhou's underground home church would have been reported in the 2012 *China Aid* Report if, in fact, it did occur. The RPD has this to say about the *China Aid* Reports:

[12] [...] the panel notes that the claimant has provided the 2018 *China Aid* Report which identifies cases of religious persecution in China, broken down into individual provinces, during 2017. The panel further notes that archived *China Aid* Reports are available both through the *China Aid* website as well as the Board's website on archived national Documentation Packages. The panel notes, however, that the claimant did not provide a copy of the 2012 *China Aid* Report which would have identified cases of persecution in the claimant's home province of Hunan during 2011 – the period that the claimant alleges she was persecuted. If, as the claimant alleges, her underground home church was raided in 2011, and at least two members were arrested, it is reasonable to expect that the incident would have been reported in the 2012 *China Aid* Report. The absence of any evidence regarding the PSB raid and arrests undermines the claimant's allegations regarding persecution of her church in China. The panel finds that there is insufficient evidence to conclude the claimant converted to Christianity and became a member of an illegal house church in China.

[Emphasis added]

[8] After rejecting Ms. Zhou's claims regarding the existence of an arrest warrant, visits by the PSB to her home, her use of a smuggler and her evasion of authorities on departure from China, the RPD again turned its attention to the fundamental question; namely, Ms. Zhou's purported Christianity.

[9] In support of her contention that she continues to be a practising Christian in Canada, Ms. Zhou provided the RPD with a letter from Reverend David Ko of the Living Stone Assembly Church which confirms that Ms. Zhou has been a member of the church since October 30, 2011.

Ms. Zhou also provided photographs and a baptismal certificate from the church. Ms. Zhou was questioned by her counsel and by the RPD regarding her purported Christian faith. The RPD accepted that she had some knowledge of Christian doctrine and did not question the fact that she has been a member of the church since her arrival in Canada. However, the RPD did not find the evidence to be conclusive of her Christian faith in light of its previous concerns regarding credibility. In fact, the RPD cast doubt upon her motivation for joining the church.

[10] After consideration of all the evidence, including Ms. Zhou's testimony and lack of credibility, the RPD concluded she does not have a well-founded fear of persecution based on religion if she were to return to China.

IV. Relevant Provisions

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

V. Analysis

A. *Standard of Review*

[12] The only issue raised in the pleadings is the RPD's interpretation and weighing of the evidence, including its conclusions about Ms. Zhou's credibility. It is well-established that the standard of review applicable is that of reasonableness (*Li v Canada (Citizenship and Immigration)*, 2019 FC 307 at para 8; *Su v Canada (Citizenship and Immigration)*, 2013 FC 518

[*Su*] at para 7; *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. *Reasonableness of Credibility Finding*

[13] Ms. Zhou contends the RPD’s finding regarding her conversion to Christianity is speculative. She contends the RPD made a speculative assertion that risk of arrest would have dissuaded her from joining her underground church. Furthermore, she contends it was entirely unreasonable for the RPD to use the failure of the 2012 *China Aid Report* to mention the PSB raid in June 2011, to attack her credibility.

[14] I am fully aware that a judicial review is not a “line-by-line treasure hunt for error” and a reviewing court must approach the reasons and outcome of a tribunal’s decision as an “organic whole” (*Kanhasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 138; *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd.*, 2013 SCC 34 at para 54). However, in the present case, a reviewing court need not “hunt” for error. The prey leaps from the woods and stands ready to be trapped or shot at, depending upon the means of harvest.

[15] First I address the RPD's suggestion that fear of authorities should have dissuaded Ms. Zhou from pursuing her Christian calling. Ironically, assistance in overcoming fear is a universally understood hallmark of the Christian faith and the faith of other religions over the centuries. Consider for example the lives of Martin Luther King, Mahatma Ghandi and others. Overcoming fear of authorities is a trait that supports Ms. Zhou's assertion of her faith. The RPD's conclusion that fear would have dissuaded her from joining the church is mere speculation, unsupported by any evidence. That unreasonable conclusion led the RPD to make a conclusion about credibility that impacted every other aspect of its analysis.

[16] Second, I turn to the RPD's observations regarding the 2012 *China Aid* Report. The RPD is simply wrong to suggest that the absence of a reference to the 2011 raid in the Report proves it did not happen and thereby weakens Ms. Zhou's credibility. As pointed out by counsel for Ms. Zhou, there was no evidence that the *China Aid* Reports are so comprehensive that they include every arrest based upon religious grounds that occur in China. In fact, in the preamble to the 2012 *China Aid* Report, the authors state that it "should be noted that the information collected by China Aid about persecution cases in China is but the tip of the iceberg." If the Report is only the tip of the iceberg, it is unreasonable and incorrect for the RPD to make a negative credibility finding based upon the absence of a report when the majority of such incidents are not reported. I am of the opinion that this misinterpretation of the 2012 *China Aid* Report which led to a negative credibility finding negatively impacted the remainder of the RPD's analysis.

[17] Third, I fail to understand the RPD's conclusion with respect to Ms. Zhou's current assertion of faith. The RPD accepts that she possesses basic knowledge of her faith. The RPD

had before it corroborating evidence from Ms. Zhou's pastor, her baptismal certificate, proof of regular attendance at religious services for approximately 7 years and photographs of her with other parishioners. Despite all of this, Ms. Zhou remains a fraud, according to the RPD. The facts of this case are clearly distinguishable from those I recently considered in *Zheng v. Canada (Citizenship and Immigration)*, 2019 FC 731 [*Zheng*]. As I observed in *Zheng*, the jurisprudence holds that it is reasonable for the RPD to expect a refugee claimant possess rudimentary knowledge of one's faith (*Zheng* at para 17; *Wang v Canada (Citizenship and Immigration)*, 2018 FC 668 at paras 29-39). In *Zheng*, it was clear on the facts that the Applicant had virtually no knowledge of the practice of Falun Gong, practised the exercises intermittently and offered minimal evidence of fellowship/participation with others in the pursuit of his religion (*Zheng* at paras 17-18). Those facts diverge significantly from the facts before the RPD, and accepted by it, in the present case.

VI. Conclusion

[18] I am of the view that the RPD's conclusion regarding Ms. Zhou's conversion to Christianity and her practice of Christianity in China and Canada is clouded by negative credibility findings which result from speculation, misinterpretation of the 2012 *China Aid* Report and disregard of the evidence. The whole of the RPD analysis is impacted by these errors. Given these observations, I am of the view that the decision is neither justifiable nor intelligible. It therefore does not meet the test of reasonableness (*Dunsmuir*, at para 47).

[19] For the foregoing reasons, the application for judicial review is granted. I set aside the Decision, and order the matter be remitted to a different panel of the RPD for redetermination.

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

JUDGMENT in IMM-5154-18

THIS COURT'S JUDGMENT is that the application for judicial review is granted without costs. The matter is remitted for redetermination by a differently constituted panel of the Refugee Protection Division. No question is certified for consideration by the Federal Court of Appeal.

“B. Richard Bell”

Judge

SCHEDULE

Immigration and Refugee Protection Act, SC 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 subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of the Convention Against

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 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

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 health or medical care.

Person in need of protection

(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.

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 soins médicaux ou de santé adéquats.

Personne à protéger

(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-5154-18

STYLE OF CAUSE: JINGUI ZHOU v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 28, 2019

JUDGMENT AND REASONS: BELL J.

DATED: JULY 22, 2019

APPEARANCES:

Shelley Levine

FOR THE APPLICANT

Erin Estok

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Levine Associates
Barristers and Solicitors
Toronto, Ontario

FOR THE APPLICANT

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT