

Federal Court



Cour fédérale

Date: 20191107

Docket: IMM-444-19

Citation: 2019 FC 1395

Ottawa, Ontario, November 7, 2019

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**XIZONG HE
(A.K.A. XiZong HE)**

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This judicial review concerns a decision by the Refugee Appeal Division [RAD] finding the Applicant not to be a refugee or in need of protection. Its decision was based principally on the RAD finding certain documents within the application to be fraudulent.

[2] The parties accept that if the documents are indeed fraudulent, then the application must be dismissed.

II. Background

[3] The Applicant is a citizen of China. He based his claim on his belief that if he returns to China, he will be arrested due to his involvement in protests against tainted vaccines following the death of a young boy under his guardianship. The Refugee Protection Division and then the RAD rejected his claim.

[4] The authenticity of two documents is central to this claim. The first is a Chinese Public Security Bureau summons that the Applicant purportedly received [Summons]. The second is an arrest summons that was allegedly received by another protester [Arrest Summons].

[5] The RAD compared the submitted documents with sample standard documents and because the RAD noted several differences between them, it concluded that the documents were fraudulent. Having reached that conclusion, the RAD found the rest of the Applicant's narrative was not credible.

[6] The Respondent concedes that the RAD erred in its consideration of the Basis of Claim and the Notice of Arrest but argues that the Applicant still has not shown that he was wanted by the Public Security Bureau.

III. Analysis

[7] The determinative issue in this judicial review is whether the RAD's conclusion, and particularly its findings of documentary fraudulence, are reasonable (see *Zhuang v Canada (Citizenship and Immigration)*, 2019 FC 263). The decision is reasonable if it 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, [2008] 1 SCR 190.

[8] The Applicant alleges that the RAD conducted microscopic examinations of the Summons and Arrest Summons. However, a microscopic examination is usually the only reasonable method of detecting forgeries. It is the duty of the RAD in the circumstances to undertake that type of examination.

[9] I distinguish cases such as *Liu v Canada (Citizenship and Immigration)*, 2017 FC 736, on the facts because the nature of the examination is dependent on the nature of the alleged forgery and the documents under examination.

[10] In this case, the RAD found that the Summons and Arrest Summons were fraudulent based on deviations between them and sample standard documents. In that regard, the RAD is entitled to deference, but the examination must be accurate and the deviations real and substantive.

[11] In the present case, and without more evidence as to whether such deviations occurred, I cannot uphold the RAD's findings. I mention but a few instances:

- The Summons had parenthesis around what appears to be the place for the city or location. The RAD noted the absence of parenthesis in the actual document but without taking account of the explanation that the parenthesis was a "place holder".
- The standard form had a line consistent with a date. The last two characters are "xx" whereas the actual form had a full date. As "x" was not a Chinese character, the RAD had no explanation why the "xx" was also not a place holder.
- A line for the accused's signature was not filled in. While the RAD noted the absence and suggested its absence indicated fraud, the signature place was to be signed by the accused when caught. The Applicant was not caught.
- An arrest document being a notice to the family was dated March 9; the arrest was March 8. The RAD drew an adverse inference from the dates. However, the form referred to Article 91 (presumably of a penal statute). Article 91 requires the giving of notice of arrest within 24 hours of arrest. Without better explanation, the dating is consistent with Article 91 such that there is no adverse inference to be drawn.

[12] The RAD may be able to explain the adverse conclusions that they have drawn from these, and other, minor examples; however, they have not done so. Without such explanation, I find the decision unreasonable because it does not fall "within a range of possible, acceptable

outcomes which are defensible in respect of the facts and law”, as required because the decision is not defensible.

IV. Conclusion

[13] For these reasons, the judicial review is granted, the decision is quashed and the matter returned to the RAD for a new determination by a differently constituted panel. There is no question for certification.

JUDGMENT in IMM-444-19

THIS COURT'S JUDGMENT is that the application for judicial review is granted, the decision is quashed and the matter returned to the Refugee Appeal Division for a new determination by a differently constituted panel.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-444-19

STYLE OF CAUSE: XIZONG HE (A.K.A. XiZong HE) v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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