Federal Court Cour fédérale

Date: 20191120

Docket: IMM-897-19

Citation: 2019 FC 1478

Ottawa, Ontario, November 20, 2019

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

LILI TANG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of the decision of a single member of the Immigration and Refugee Board Refugee Protection Division [RPD], which determined the Applicant is neither a Convention Refugee nor a person in need of protection in accordance with section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

II. Facts

[2] The Applicant is a permanent resident of Hong Kong. She claims she cannot return to Hong Kong because loan sharks in Hong Kong will kill her if she does not pay a sum of money they think she owes them, but in fact does not. The Applicant claims it is her ex-boyfriend who owes the money.

[3] The RPD summarized the Applicant's allegations:

> [4] The claimant alleges that she entered into a relationship with her ex-boyfriend in December 2010, in Hong Kong. In April 2011, they began living together. She soon realized that her boyfriend was addicted to gambling and that he owed money to loan sharks. Initially, the claimant, who was working, paid off his debts. However, unbeknownst to her, her boyfriend continued to gamble. In November 2011, her boyfriend told her that he was going out of town for a week. After he left, strangers came to her home and they demanded that she repay an amount of money, which was owed to them. She tried to contact her boyfriend but his phone was no longer in service. She also tried to have friends contact him but to no avail. The loan sharks started coming to her home every day. She was shown a receipt for the borrowed amount. It had her forged signature on it. The loan sharks threatened that they would set her house on fire and kill her. She went to the police but they said that they could not help her unless the loan sharks hurt her.

[4] In May, 2012, the Applicant came to Canada as a visitor, travelling by plane from Hong Kong. She initially stayed in Toronto. She then travelled to Saskatoon where she worked illegally until her arrest by Canada Border Service Agency [CBSA] agents on October 27, 2012. The Applicant made a claim for refugee protection on December 6, 2012. A hearing was held in January, 2019, and the claim was dismissed.

III. Decision Under Review

[5] The RPD rejected the Applicant's refugee claim in a decision dated January 17, 2019 [Decision]. The determinative issues included credibility, internal flight alternative [IFA], and lack of nexus to a Convention ground.

[6] On the determinative issues, the RPD stated:

> [12] While the claimant's testimony was consistent with her narrative contained in her PIF, that narrative is brief. She was asked to expand on the events surrounding her allegations. She was asked questions regarding her contact with the loan sharks, why she remained in her home when she was fearful of them, why she did not tell the police initially that they were loan sharks, and why she waited so long to leave Hong Kong. She was unable to give plausible responses to these questions. She testified that she remained in her home because she was waiting for her boyfriend to return, despite the danger that she felt herself to be in. She also testified that she was ashamed to tell the police the real reason that she had called them because her signature, albeit forged, was on the receipt for the money owed, and for this reason, she did not tell them about the loan sharks until later. Furthermore, she was too ashamed to return to her family in Sichuan province, because being indebted to loan sharks is frowned upon. I do not find the claimant to be credible. I do not accept her testimony that the police refused to take any action, despite being told eventually that she was being threatened and that her signature had been forged, particularly given that they attended at her apartment on four separate occasions. If the police took the time to attend each time she contacted them, it is reasonable to believe that they were taking the matter seriously.
>
> [13] In addition, I find the claimant's reason for not leaving her home to be implausible. She testified that the loan sharks came to her apartment on several occasions and that on each occasion she was threatened by them. However, she chose to remain there in case her boyfriend returned. This continued for approximately five months. I also note that during this time the loan sharks did not act on their threats. I do not underestimate the fear that threats may cause a person. However, given the time that transpired, the inaction of the loan sharks, and the fact that the claimant made no attempt to hide her whereabouts, it is reasonable to assume that she

> felt she could remain in her home without danger. In my View, this impacts her credibility when she testified that she is too frightened to return to Hong Kong. I also note that the six years have passed since the alleged events took place. The claimant has had no contact with her boyfriend, yet she assumes that the debt is still outstanding and that she would still be in danger.
>
> [14] The claimant arrived in Canada in May 2012. She did not apply for refugee protection until October 2012, after she was discovered working illegally by Canadian immigration officials. While a delay in applying for refugee protection is not necessarily fatal to one's claim, when considered together with the evidence above, I find the timing of the claim for refugee protection further negatively impacts the claimant's credibility. In my View, having considered the claimant's testimony, I find that she lacks credibility and that there is no independent, credible evidence to link the claimant to potential persecution or a risk of harm.
>
> **State Protection**
>
> [15] Even if I was to have found her to be credible regarding the indebtedness to the loan sharks and the lack of assistance from the Hong Kong police, current country documentation, filed by the claimant, suggests that while loan sharks are operating in Hong Kong, the police are taking seriously the threat that they pose to individuals indebted to them.10 For this reason, I find that state protection is available to the claimant.
>
> ...
>
> [17] In addition, the jeopardy faced by the claimant is the same faced generally by others who find themselves indebted to loan sharks. I find that there is not a nexus to a Convention ground.

[7] In addition, the RPD stated that even if the Applicant was found to be credible, there was an IFA elsewhere in China, over a thousand kilometers from Hong Kong, where she has ties. The RPD noted that even if it was accepted the loan sharks knew what region the Applicant is from, there was no evidence that they knew her family's location in what is a large province.

IV. Issues

[8] The only issue for determination is whether the Decision is reasonable.

V. Standard of Review

[9] In *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at paras 57, 62, the Supreme Court of Canada holds that a standard of review analysis is unnecessary where "the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question." A reasonableness standard of review is to be applied to fact-driven decisions of the RPD: *Ahmed v Canada (Minister of Citizenship and Immigration)*, 2016 FC 828, per Boswell J at paras 8-9; *Li v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1273, per LeBlanc J at paras 13, 21–22.

[10] It is well-established the reasonableness standard of review is a deferential one, such that deference is owed to the RPD: *Ahmed v Canada (Citizenship and Immigration)*, 2016 FC 828 per Boswell J at para 9; *Li v Canada (Citizenship and Immigration)*, 2015 FC 1273 per LeBlanc J at paras 13, 21-22; *Sater v Canada (Citizenship and Immigration)*, 2013 FC 60 per de Montigny J, as he then was, at para 3; *Lin v Canada (Citizenship and Immigration)*, 2008 FC 1052 at para 13 per Teitelbaum J.

[11] Thus, it is for the RPD, not a reviewing court, to assess and weigh the evidence placed before it. This is part of the RPD's core mandate. Judicial review is not the substitution by a

reviewing judge of the RPD's assessment of the evidence; judicial review is the determination of reasonableness as that concept is defined by the Supreme Court of Canada in *Dunsmuir*.

[12] In *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31, per Gascon J, writing for the majority, at para 55, the Supreme Court of Canada explains what is required of a court reviewing on the reasonableness standard of review:

> [55] In reasonableness review, the reviewing court is concerned mostly with "the existence of justification, transparency and intelligibility within the decision-making process" and with determining "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47; *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708, at para. 14). When applied to a statutory interpretation exercise, reasonableness review recognizes that the delegated decision maker is better situated to understand the policy concerns and context needed to resolve any ambiguities in the statute (*McLean*, at para. 33). Reviewing courts must also refrain from reweighing and reassessing the evidence considered by the decision maker (*Khosa*, at para. 64). At its core, reasonableness review recognizes the legitimacy of multiple possible outcomes, even where they are not the court's preferred solution.

[13] The Supreme Court of Canada also instructs that judicial review is not a line-by-line treasure hunt for errors; the decision should be approached as an organic whole: *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34. Further, a reviewing court must determine whether the decision, viewed as a whole in the context of the record, is reasonable: *Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65; see also *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62.

VI. Analysis

[14] The Applicant submits the RPD's finding that the Applicant's claim lacked credibility because her claims were implausible was unreasonable.

[15] The Applicant notes that plausibility findings should only be made in the clearest of cases. The Applicant relies on *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 per Muldoon J at para 7 [*Valtchev*]:

> [7] A tribunal may make adverse findings of credibility based on the implausibility of an applicant's story provided the inferences drawn can be reasonably said to exist. <u>However, plausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant.</u> A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu. [see L. Waldman, *Immigration Law and Practice* (Markham, ON: Butterworths, 1992) at 8.22]
>
> [Emphasis added]

[16] An allegation may be found implausible when it does not make sense in light of the evidence before the Board or is outside the realm of what reasonably could be expected. Otherwise, a plausibility determination may be nothing more than unfounded speculation. The Applicant relies on *Aguilar Zacarias v Canada (Citizenship and Immigration)*, 2012 FC 1155 per Gleason J, as she then was, at para 11 [*Zacarias*]:

> [11] An allegation may thus be found to be implausible when it does not make sense in light of the evidence before the Board or

> when (to borrow the language of Justice Muldoon in *Vatchev*) it is "outside the realm of what reasonably could be expected". In addition, this Court has held that the Board should provide "a reliable and verifiable evidentiary base against which the plausibility of the Applicants' evidence might be judged", otherwise a plausibility determination may be nothing more than "unfounded speculation" (*Gjelaj v Canada (Minister of Citizenship and Immigration*), 2010 FC 37 at para 4, [2010] FCJ No 31; see also *Cao v Canada (Minister of Citizenship and Immigration)*, 2012 FC 694 at para 20, [2012] FCJ No 885 [Cao]).

[17] The RPD found the Applicant's reason for not leaving her home when the loan sharks returned several times was implausible. Additionally, the RPD found the Applicant's failure to leave home for several months was an indication that she felt she could remain at home, which further impacted the credibility of her statement that she was too frightened to return to Hong Kong. The Applicant submits this finding was unreasonable because the RPD did not consider individuals react differently to crisis and danger, and the fact that the Applicant did not take a particular course of action in response to a crisis is not an indication that she lied.

[18] The Applicant submits the Applicant acted in accordance with an ordinary person with reasonable prudence because such a person is unlikely to flee when initially threatened, but is much more likely to flee after the threats accumulated and escalated over a longer period of time.

[19] The Applicant also submits the RPD's reasoning that if the police are willing to attend the Applicant's apartment on four occasions they must be willing to take action to protect the Applicant from threats was entirely speculative. Moreover, it is not clear to the Applicant where the RPD drew the conclusion from the reports adduced by the Applicant that police in Hong Kong deal seriously with loan shark matters.

[20] The Applicant further submits the RPD’s findings in relation to the IFA were clouded by the credibility finding, and that this might have been different if the negative credibility finding had not been made.

[21] The Applicant does not make submissions on the other determinative issue, namely lack of nexus to a Convention ground.

[22] On the other hand, the Respondent submits the RPD’s conclusions are justified, transparent an intelligible and the Applicant fails to raise a reviewable error.

[23] First, the Respondent submits the RPD’s finding that the Applicant has a viable IFA located a considerable distance from Hong Kong was determinative of the Applicant’s claim for refugee protection. I agree, and indeed there is no dispute on this point. As stated in *Siliya v Canada (Citizenship and Immigration)*, 2015 FC 120 per Boswell J at para 25:

> [25] I reject the Applicants’ argument that the RAD erred by deciding that the existence of an IFA was determinative without assessing their arguments that the RPD had mischaracterized the nature of the risk. The RAD’s decision should not be disturbed because the Applicants never challenged the dispositive finding of the RPD as to an IFA and, thus, there was no basis for any appellate intervention by the RAD. Accordingly, the standard by which the RAD reviewed the IFA finding is irrelevant, and even if it was selected erroneously that does not negate the RAD’s conclusion in disposing of the Applicants’ appeal on the basis that:
>
> > [35] The question of internal flight alternative is integral to both the definition of a Convention refugee and that of a person in need of protection. As the Appellants can find viable internal flight alternatives in their own country, they do not require Canada’s surrogate protection.

[24] Alternatively, the Respondent submits that even if the IFA issue was not determinative, the Applicant failed to raise a reviewable error with the RPD's other findings.

[25] The Respondent submits the RPD's implausibility finding with respect to the Applicant's failure to leave the home was reasonable. I agree. The Applicant claimed she could not return to Hong Kong because she would be at risk of the loan sharks, yet admitted she remained in the same apartment for five months while the loan sharks threatened her repeatedly. In my respectful view, it was open to the RPD acting reasonably to find an implausibility in this; in my view it is reasonable to say that if the Applicant believed she required international protection from the loan sharks, she would have taken minimal steps, for example finding a different apartment or leaving the city altogether, before fleeing to Canada.

[26] I have also considered the RPD's implausibility finding with respect to the Applicant's claim the police would not protect her from the loan sharks. In my view this finding is within the range of acceptable and defensible outcomes, i.e., is reasonable. I agree the Applicant did not provide sufficient objective evidence to explain why the police would not help her when in fact the police responded to her home on no less than four occasions, that is, every time she complained. In addition the Applicant filed country condition evidence demonstrating the police took loan sharking seriously; while the Applicant says that evidence only applies to loan sharking victimizing foreign workers, there is no discussion or limitation of that sort in this part of the record.

[27] In this case, as agreed by both parties, credibility is the central issue. It is therefore worthwhile to set out the law in this respect, which I recently summarized in *Khakimov v Canada*, 2017 FC 18 at paras 23-24. A key feature of the oral hearings offered by the RPD is of course its determinations on credibility. The Federal Court of Appeal has clearly held that findings of fact and determinations of credibility fall within the heartland of the expertise of the RPD:

> [23] …To begin with, the RPD has broad discretion to prefer certain evidence over other evidence and to determine the weight to be assigned to the evidence it accepts: *Medarovik v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 61 at para 16; *Pushpanathan v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 867 at para 68. The Federal Court of Appeal has stated that <u>findings of fact and determinations of credibility fall within the heartland of the expertise of the RPD</u>: *Giron v Canada (Minister of Employment and Immigration)* (1992), 143 NR 238 (FCA) [*Giron*]. The RPD is recognized to have expertise in assessing refugee claims and is authorized by statute to apply its specialized knowledge: *Chen v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 805 at para 10. And see *Siad v Canada (Secretary of State)*, [1997] 1 FC 608 at para 24 (FCA), where the Federal Court of Appeal said that the RPD:
>
> > … is uniquely situated to assess the credibility of a refugee claimant; credibility determinations, which lie within "the heartland of the discretion of triers of fact", are entitled to considerable deference upon judicial review and cannot be overturned unless they are perverse, capricious or made without regard to the evidence.
>
> [24] The RPD may make credibility findings based on implausibility, common sense and rationality, although adverse credibility findings "should not be based on a microscopic evaluation of issues peripheral or irrelevant to the case": *Haramichael v Canada (Minister of Citizenship and Immigration),* 2016 FC 1197 at para 15, citing *Lubana v Canada (Minister of Citizenship and Immigration)*,2003 FCT 116 at paras 10-11 [*Lubana*]; *Attakora v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 444. The RPD may reject uncontradicted evidence if it "is not consistent with the

> probabilities affecting the case as a whole, or where inconsistencies are found in the evidence": *Lubana*, above at para 10. The RPD is also entitled to conclude that an applicant is not credible "because of implausibilities in his or her evidence as long as its inferences are not unreasonable and its reasons are set out in 'clear and unmistakable terms'": *Lubana*, above at para 9.
>
> [Emphasis added]

[28] With respect, the Applicant's challenges to the RPD's credibility findings do not surmount the deference to which they are entitled in this case.

[29] At the hearing, the Applicant said that she knew from the first time the loan sharks approached her in November, 2011 that she would not be able to pay the amount owing and she understood that if she did not pay within several days the amount would double. The RPD quite reasonably doubted her explanation as to why she, implausibly in my respectful view, waited five months until April, 2012 to leave her home. The Applicant in effect asks this Court to accept her evidence and prefer it over the findings of the RPD. However, it is beyond the scope of judicial review to reweigh and reassess the evidence. Her request in this respect cannot be granted.

[30] I also agree that the Applicant failed to provide sufficient objective evidence to explain why the police would not help her when they responded to alleged threats at her home four times. In my view, the Applicant's reasoning does not make sense in light of the evidence that the police took loan sharking seriously. Her assertion, in my view, is "outside the realm of what reasonably could be expected" as quoted from *Valtchev* at para 7 and *Zacarias* at para 11.

[31] The RPD's negative credibility finding was determinative of the Applicant's claim for refugee protection. It is well known that where the Board makes a general finding that a claimant lacks credibility, that determination is sufficient to dispose of the claim unless there is independent and credible documentary evidence in the record capable of supporting a positive disposition of the claim. As stated by the Federal Court of Appeal in *Canada (Citizenship and Immigration) v Sellan*, 2008 FCA 381 per Desjardins, Nadon and Blais JJA at paras 2 and 3:

> [2] The Judge also certified a question, namely: where there is relevant objective evidence that may support a claim for protection, but where the Refugee Protection Division does not find the claimant's subjective evidence credible except as to identity, is the Refugee Protection Division required to assess that objective evidence under s. 97 of the Immigration and Refugee Protection Act?
>
> [3] In our view, that question should be answered in the following way: where the Board makes a general finding that the claimant lacks credibility, that determination is sufficient to dispose of the claim unless there is independent and credible documentary evidence in the record capable of supporting a positive disposition of the claim. The claimant bears the onus of demonstrating there was such evidence.
>
> [Emphasis added]

[32] Thus, in my view the RPD acted reasonably in finding there was a viable IFA in another province. As already noted, an IFA finding is also determinative. There are two aspects of an IFA that must be considered: (1) risk of persecution, and (2) reasonableness of the claimant moving to the place where an IFA has been identified: *Hamdan v Canada (Minister of Immigration, Refugees and Citizenship)*, 2017 FC 643, per Crampton CJ:

> [10] There are two parts to the test for an IFA.
>
> [11] First, in the context of section 96 of the IRPA, the RPD must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which an IFA exists (*Thirunavukkarasu v Canada*

> *(Minister of Employment and Immigration)*, [1994] 1 FC 589, at 593 (FCA) [*Thirunavukkarasu*]). In the context of section 97, the corresponding test is that the RPD must be satisfied that the claimant would not be personally subjected to a danger described in paragraph 97(1)(a), or to a risk described in paragraph 97(1)(b).
>
> [12] Second, for the purposes of both section 96 and section 97 of the IRPA, the RPD must determine that, in all of the circumstances, including the circumstances particular to the claimant, conditions in the part of the country where a potential IFA has been identified are such that it would not be objectively unreasonable for the claimant to seek refuge there, before seeking protection in Canada (*Thirunavukkarasu*, above, at 597). In this regard, the threshold for objective unreasonableness is "very high" and "requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to" the area where a potential IFA has been identified (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164, at para 15 (FCA) [*Ranganathan*]). Stated differently, objective unreasonableness in this context requires a demonstration that the claimant would "encounter great physical danger or […] undergo undue hardship in travelling" to the IFA (*Thirunavukkarasu*, above, at 598). In addition, "actual and concrete evidence of such conditions" must be adduced by the claimant for refugee protection in Canada (*Ranganathan*, above, at para 15).

[33] The IFA analysis in this case is not long. It does not deal with IFA in the structured manner suggested by the jurisprudence. However, it identifies a place where an IFA exists, and does so on the basis of the record before the tribunal. This IFA was raised with the Applicant at the hearing and she was questioned on this issue. Her counsel also addressed IFA at the end of the RPD hearing.

[34] The Applicant doubts whether the second part of the analysis was considered. With respect, I disagree. What the Applicant is asking the Court to do, again, is to reweigh and reassess the evidence of the Applicant herself. The Applicant asks the Court to accept as truthful

and sufficient her explanation why she does not what to go to the IFA. To recall, that was because of her allegations her parents would disapprove of her involvement with the loan sharks, and the loan sharks would be able to find her. It seems reasonable and evidence based to consider it unlikely loan sharks would try or be able to find the Applicant given the seven year gap in time, and because the Applicant testified that to her knowledge the loan sharks had not gone looking for her there. Once again, I am unable to reweigh the evidence to accommodate the Applicant's submission.

[35] The RPD addressed the reasonableness of the Applicant going to the IFA in saying there were no impediments in that respect. In my respectful opinion, it was open to the panel to find her evidence untruthful given its finding that the Applicant lacks credibility. And, with respect, it was also open to the RPD to find her explanation insufficient to discharge her obligation to rebut, at the very least with clear and convincing evidence, the RPD's identification of a viable IFA.

VII. Conclusion

[36] In my view, the RPD's credibility finding, including its implausibility findings, were open to it on the record before it and the Applicant's testimony. There is no merit to the Applicant's argument that the RPD's implausibility findings were unreasonable. The IFA finding is likewise defensible on the record. Upon stepping back and examining the Decision as an organic whole, I find the Decision falls within the range of possible, acceptable outcomes that are defensible on the facts and law. Therefore, judicial review will be dismissed.

VIII. Certified Question

[37] Neither party proposed a question of general importance, and none arises.

JUDGMENT in IMM-897-19

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed, no question of general importance is certified, and there is no order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-897-19
STYLE OF CAUSE:	LILI TANG v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	NOVEMBER 12, 2019
JUDGMENT AND REASONS:	BROWN J.
DATED:	NOVEMBER 20, 2019

APPEARANCES:

Dov Maierovitz	FOR THE APPLICANT
Christopher Crighton	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Barrister & Solicitor EME Professional Corp. Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT