

Federal Court



Cour fédérale

**Date: 20191202**

**Docket: IMM-1465-19**

**Citation: 2019 FC 1541**

**Ottawa, Ontario, December 2, 2019**

**PRESENT: Mr. Justice Boswell**

**BETWEEN:**

**SHIJIE LIU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, Shijie Liu, claimed refugee protection in December 2015 based on his Christian faith. The Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] rejected his claim in December 2017. The RPD found credibility was the determinative issue, and that Mr. Liu had not established his identity as a devoted Christian believer.

[2] Mr. Liu appealed the RPD's decision to the Refugee Appeal Division [RAD] of the IRB. The RAD dismissed the appeal in a decision dated February 5, 2019 and, pursuant to paragraph 111(1) (a) of the *Immigration and Refugee Protection Act, SC 2001, c-27 [IRPA]*, confirmed the RPD's decision.

[3] The Applicant has now applied under subsection 72(1) of the *IRPA* for judicial review of the RAD's decision. He asks the Court to set aside the decision and return the matter for redetermination by another member of the RAD. The question for the Court, therefore, is: should this relief be granted?

I. Background

[4] Mr. Liu is a Chinese citizen who asserts that the Chinese authorities want to arrest him due to his Protestant beliefs and membership in an "illegal" or "underground" church not formally registered with the Chinese government.

[5] Mr. Liu says his Christian faith began in 2011 and he started to participate in an underground Protestant church. In April 2012, Chinese police were spotted approaching his church and organizers told Mr. Liu and his fellow congregants to leave through the side door. After this incident, Mr. Liu moved into his uncle's home and stayed there until the end of August 2012. During this time, he unsuccessfully applied for a United States student visa in June and again in July. Mr. Liu returned to his home at the end of August after he learned that some of his fellow church members who had returned to their homes had not been arrested.

[6] In October 2012, Mr. Liu's church resumed services at a different location. Mr. Liu recruited a friend to his church in December 2013. While Mr. Liu was on his honeymoon in late October 2014, he received a phone call from one of the church members who reported that Chinese police had raided their church and arrested four people, including Mr. Liu's friend.

[7] After he returned from his honeymoon, Mr. Liu went to live with another uncle with the aim of avoiding arrest. This uncle arranged for a smuggler to help Mr. Liu apply for a student visa to Canada.

[8] Mr. Liu arrived in Canada in mid-April 2015 but did not initiate a refugee claim until mid-December 2015. Mr. Liu claims he delayed making a refugee claim because he had insomnia and no relatives or friends in Canada, but once his health and social situation improved, he decided to seek protection.

## II. The RAD's Decision

[9] In its decision dated February 5, 2019, the RAD noted that Mr. Liu did not submit any new evidence, nor did he request an oral hearing. It observed that appeals are appellant-driven and that Mr. Liu's memorandum to the RAD lacked "substantive arguments with respect to the RPD's findings on subjective fear and delay" and failed to show how, or whether, the RPD erred in this regard. After reviewing Mr. Liu's explanations for the delay in initiating a refugee claim, the RAD concurred with the RPD that the delay showed a lack of subjective fear and concluded that the RPD had not erred in finding Mr. Liu's explanations insufficient.

[10] The RAD found that, although the RPD's assessment of Mr. Liu's level of knowledge relative to his stated religious beliefs was appropriate, the RPD erred in its conclusions on the genuineness of his beliefs. The RAD noted that, while "at times, the RPD did 'veer towards trivia' in its approach to questioning the Appellant", its questioning was "generally restricted to open-ended questions about the importance of Christianity to the Appellant and how he applied Christian principles to his daily life".

[11] After assessing the RPD's analysis of Mr. Liu's religious beliefs and the genuineness of those beliefs, the RAD determined that it was "willing to accept, on a balance of probabilities, that the Appellant may hold a genuine religious belief in Christianity". The RAD further determined that the RPD had not erred in questioning Mr. Liu's claims with respect to the extent, scope, and frequency of his religious practice. The RAD found the RPD had not erred in concluding that Mr. Liu's level of engagement with Christianity was inconsistent with his oral testimony.

[12] Having found that Mr. Liu had a genuine belief in Christianity, the RAD then considered the risk he might face should he return to China, an analysis the RPD had not undertaken due to its conclusion that he was not credible. The RAD concluded, on a balance of probabilities, that Mr. Liu had not dedicated himself to the practice of his religion; nor had he come to the attention of Chinese authorities because of his Christian faith. It also concluded that Mr. Liu had not established that he faces a serious possibility of persecution should he return to China.

[13] The RAD conducted a detailed and independent analysis of the country conditions evidence. It looked to the National Documentation Package for China dated October 31, 2017; the U.S. Department of State “International Religious Freedom Annual Report” from 2016; the United Kingdom Home Office report from March 2016 on “Country Information and Guidance, China: Christians”; and the Australia Refugee Review Tribunal “Background Paper: Protestants in China” from March 2013.

[14] Although the RAD acknowledged that religious persecution is a reality in China and arrests of pastors and other church leaders do occur, it found that unregistered Protestant groups are not generally equated to groups like Falun Gong which have been declared to be “evil cults” by the Chinese government. The RAD further found there are few formal doctrinal differences between state-sanctioned Protestant churches and unregistered churches; and even though many Protestants reject the Communist influence in state-sanctioned churches, unregistered groups such as Mr. Liu’s continue to grow rapidly and they are not pressured to register with the state.

[15] The RAD found:

[37] ...Protestants are not persecuted, per se, in China. As previously noted, there are tens of thousands of unregistered churches in China, most of which carry out their business with little, if any, trouble from the local authorities. This is not to say that the Chinese state does not engage in repression of Protestants; it clearly has engaged in persecutory acts against some religious leaders and others who have become specifically associated with a house church that has been deemed unacceptable.

[38] This finding does mean, however, that the fact of being a Protestant in China does not, on its own, raise a serious possibility of persecution. This finding is supported by the United Kingdom Home Office, which has stated that “[i]n general the treatment faced by Christians in China, including those from unregistered churches, is unlikely to amount to persecution.”

[16] The RAD determined that, in order to prove he faces a serious possibility of persecution should he return to China, Mr. Liu had to establish something beyond the mere fact of being a Protestant and that there was no aspect of his profile to single him out from the tens of millions of other Protestants in China. Because Mr. Liu did not adduce proof to establish this, the RAD concluded that Mr. Liu had not established that he faces a serious possibility of persecution were he to return to China.

### III. The Parties' Submissions

#### A. *The Applicant's Submissions*

[17] According to Mr. Liu, the RAD erred in assessing his *sur place* claim and in concluding that he had not established there was any aspect of his profile that would single him out of the tens of millions of Protestants free from a serious possibility of persecution.

[18] Mr. Liu alleges that the RAD failed to consider the most recent evidence about country conditions for Protestants in China. In particular, he claims the RAD did not consider the 2017 United States Commission on International Religious Freedom Report or a 2017 Freedom House Report on Christians in China.

[19] In Mr. Liu's view, this evidence shows that: China has strengthened government controls over religious education and clergy; Christians have been arrested for displaying the cross in their homes or printing religious materials; and parents have been threatened for bringing their children to church and blocked from hosting certain religious activities. According to Mr. Liu,

the Freedom House report found an increase of persecution of Protestants in China since 2014, and this higher degree of suppression persisted throughout 2015 and early 2016.

[20] Mr. Liu says the RAD's findings about whether he could freely practice his Christian faith in China without facing more than a mere possibility of persecution does not fall within the range of possible acceptable outcomes.

B. *The Respondent's Submissions*

[21] The Respondent says the RAD based its assessment of Mr. Liu's religious beliefs on country conditions documents that do not find unregistered Christians are persecuted. According to the Respondent, while members of designated cults may be at risk of persecution, low-level practitioners such as Mr. Liu are not at risk of persecution simply for belonging to an unregistered church.

[22] The Respondent notes that the RAD is presumed to have considered all relevant materials, and that Mr. Liu did not present any evidence suggesting he was at risk. The Respondent contends that Mr. Liu failed to prove he is forbidden from practicing his faith or that he faces persecution should he return to China.

IV. Analysis

[23] Mr. Liu raises one discrete issue: did the RAD err in considering the *sur place* element of his claim for refugee protection by finding he would face no more than a mere possibility of

persecution was he to practice his Christian faith in China? This issue is subsumed, however, by the over-arching question of whether the RAD's decision, when looked at as an organic whole, was reasonable.

A. *What is the Standard of Review?*

[24] The applicable standard for review of the RAD's decision is reasonableness (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35).

[25] The reasonableness standard of review 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).

[26] The RAD's decision and reasons are to be approached and read as an organic whole, in light of the record, to determine whether the outcome falls within a range of possible outcomes in light of the facts and the law (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54).

B. *Was the RAD's Decision Reasonable?*



[27] Although Mr. Liu claims the RAD did not adequately consider his *sur place* claim, he did not advance new evidence to support a *sur place* claim; nor has he submitted cogent or persuasive arguments to explain why he believes this claim was not adequately considered. Mr. Liu's memorandum to this Court lacks detailed arguments about how the RAD failed to consider his *sur place* claim, especially given that he did not raise this issue before the RAD.

[28] A *sur place* claim is one in which a claimant becomes a refugee due to events that have occurred in their home country, or because of an intensification of pre-existing factors, since their departure. A claimant can also become a *sur place* refugee due to actions he or she does in Canada that affect their safety and security in their home country. To be considered a refugee *sur place*, a claimant must show that he or she has an objective basis for their subjective fear of prosecution in their home country (*Kante v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 525 at para 8).

[29] In reviewing the RAD's reasons, the RAD reasonably reviewed the evidence before the RPD. Mr. Liu did not submit any new evidence before the RAD, nor did he request an oral hearing. The RAD observed that appeals are appellant-driven, and that Mr. Liu's memorandum to the RAD lacked "substantive arguments with respect to the RPD's findings on subjective fear and delay" and failed to show how, or whether, the RPD erred in this regard. The same is true for Mr. Liu's memorandum to this Court.

[30] In reviewing the evidence related to Mr. Liu's religious beliefs, the RAD concluded that he might hold a genuine religious belief in Christianity. The RAD then explained why it did not

believe that Mr. Liu had come to the attention of Chinese authorities, or that he had dedicated himself to the practice of his religion in such a way as to face a serious possibility of persecution should he return to China.

[31] It was reasonable for the RAD to find that, just because Mr. Liu proved himself a Protestant in China, this was not on its own enough to raise a serious possibility of persecution.

[32] Both the RPD and the RAD found significant issues with Mr. Liu's credibility, specifically finding that his claim that Chinese authorities wanted him was not credible. This finding was reasonable because Mr. Liu had not submitted any additional evidence that his conduct as a Protestant had brought him to the attention of Chinese authorities in such a way as to amount to persecution. The RAD did not err in its assessment of Mr. Liu's fear of persecution as a Protestant in China.

[33] The RAD considered up-to-date country conditions reports from independent and credible sources, as well as recent reports dating from 2017. Mr. Liu's argument that the RAD did not consider the most recent country conditions evidence is selective and without merit. Indeed, the 2017 Freedom House Report on Christians in China, upon which Mr. Liu relies, is not contained in the certified tribunal record. The Court in assessing the RAD's decision will not consider this additional evidence adduced by Mr. Liu. He cannot now produce new evidence which was not before the RAD to buttress and bolster his argument that the RAD erred in assessing his application.

[34] As a final note, recent cases in this Court have dealt specifically with persecution of Chinese Christians who have applied for refugee status in Canada. In all of these decisions, the Court has found that, although it is certainly possible to disagree with a finding that a Chinese Christian claimant does not face persecution, such a finding is not unreasonable (*Ke v Canada (Citizenship and Immigration)*, 2012 FC 862 at para 51; *He v Canada (Citizenship and Immigration)*, 2013 FC 362 at para 39; *He v Canada (Citizenship and Immigration)*, 2014 FC 44 at paras 47 to 50; *Zhuang v Canada (Citizenship and Immigration)*, 2019 FC 263 at paras 26 to 28; *Yang v Canada (Citizenship and Immigration)*, 2019 FC 1013).

V. Conclusion

[35] The Applicant's application for judicial review is dismissed. The RAD reasonably assessed the evidence and Liu's testimony in a transparent, justifiable, and intelligible manner, and its decision is defensible in respect of the facts and the law.

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

**JUDGMENT in IMM-1465-19**

**THIS COURT'S JUDGMENT is that:** the application for judicial review is dismissed;  
and no question of general importance is certified.

"Keith M. Boswell"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1465-19

**STYLE OF CAUSE:** SHIJIE LIU v MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

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