

Federal Court



Cour fédérale

**Date: 20200327**

**Docket: IMM-1837-19**

**Citation: 2020 FC 446**

**Ottawa, Ontario, March 27, 2020**

**PRESENT: Madam Justice McDonald**

**BETWEEN:**

**HUI LI  
JIANMIN HE**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Principal Applicant, Hui Li (PA), and her husband, Jianmin He (Male Applicant), seek judicial review of the decision of the Refugee Appeal Division (RAD) upholding the Refugee Protection Division (RPD) decision denying their refugee claim.

[2] For the reasons that follow, I have concluded that the RAD's decision is reasonable. This judicial review is therefore dismissed.

## **Background**

[3] The Applicants are Chinese citizens who allege a fear persecution in China because they are Roman Catholic. In 2016, they went to work in South Africa, but they returned to China when the PA became pregnant. In December 2016, the PA was hospitalized in China due to complications with her pregnancy.

[4] While hospitalized, her cousin convinced her to convert to Catholicism to assist with her medical issue. After agreeing to convert, she says she started praying with her cousin and she alleges that her medical condition stabilized by late February 2017.

[5] In April 2017, after the birth of their daughter, the Male Applicant returned to China from South Africa. The PA convinced her husband to convert to Catholicism and they both started attending a house church with her cousin.

[6] On June 6, 2017, the Applicants travelled to Canada. While in Canada, the PA's father-in-law informed them that the Public Security Bureau (PSB) had discovered the church the Applicants attended and had interrogated the male Applicant's parents about the Applicants' beliefs. Apparently, the PA's cousin, and others, were arrested.

[7] The Applicants claim they sent their passports back to their employer in China but the PSB seized their passports.

[8] The Applicants made a refugee claim on the ground that they want to remain in Canada to practice their faith and that they fear persecution if they return to China.

### **The RPD Decision**

[9] In November 2017, the RPD found that the Applicants were neither Convention refugees, nor persons in need of protection.

[10] The determinative issue in the claim before the RPD was credibility. The RPD found the Applicants' explanation about their passport was not credible. The RPD also found it unlikely that the PSB would prevent the Applicants from returning to China by seizing their passports since the PSB was interested in arresting them. The RPD also drew a negative inference for the Applicants failure to file a letter from the PA's father-in-law regarding their passports. The RPD concluded that, on a balance of probabilities, the PSB was not looking for the Applicants because of their religious activities.

[11] The RPD drew a negative inference from the PA's failure to file any other medical documentation to corroborate her allegations of conversion to Catholicism, other than the medical sheet showing that she had given birth to her daughter. The RPD found it was unlikely that she did not have a copy of her medical booklet from China. The RPD noted from the documentary evidence that the Chinese government distributes a mandatory booklet to patients that contains their detailed medical information and history. The PA claims to have returned this medical booklet after giving birth. The RPD determined that this explanation contradicts the documentary evidence.

[12] The RPD concluded that the PA did not convert to Catholicism because of a troubled pregnancy and that, on a balance of probabilities, she did not attend an underground Catholic church while in China.

[13] Further, the RPD found the Applicants had little to no knowledge of the Catholic faith, despite the claim to be devout followers. The RPD concluded that conversion did not occur in China, and that, on a balance of probabilities, the PA did not have pregnancy complications that led her to convert to Catholicism.

[14] The RPD gave little probative value to letters from their Pastor in Canada. The RPD noted that the two letters contained three sentences that were identical and they had no original or personal content. In addition, neither of the Applicants had a personal relationship with the pastor. The letters also only spoke to the Applicants' participation in religious activities in Canada and the RPD noted that these activities were open to anyone who wishes to attend.

[15] The RPD rejected the Applicants' refugee claims.

### **RAD Decision Under Review**

[16] The RAD confirmed the RPD decision.

[17] The RAD agreed with the Applicants that their failure to provide passports was not a determinative issue of the claim. However, the RAD also found that what undermined the Applicants' credibility was their explanation for the failure to produce their passports, not the

failure to produce the passports itself. The RAD confirmed that the RPD decision was reasonable and that it was not credible that the Applicants would return their passports to China while the authorities were allegedly looking for them. The RAD also agreed with the RPD that the Applicants provided no evidence to corroborate the PA's father-in-law's allegations, nor any documents from China to indicate the Applicants were required to come back to face the consequences of their illegal actions.

[18] The RAD noted that the documentary evidence confirming that medical clinics and hospitals issue booklets to patients to record a medical history. The RAD confirmed that the RPD did not misapply or misinterpret the documentary evidence. The RAD concluded that, on a balance of probabilities, the Applicants were not practicing Catholicism in China because they could not support the basis of their faith, being a troubled pregnancy, with probative evidence.

[19] On the genuineness of their faith in Canada, the RAD found that they would have expected information to be provided regarding their membership in the Catholic Church they attended in Toronto.

[20] The issue for the RAD was if the practice of Catholicism by the Applicants in China was illegal and whether the Chinese authorities would pursue the Applicants if they were to return to China to practice their religion in an underground church.

[21] On this issue, the RAD considered the documentary evidence regarding the status of Roman Catholicism in the Applicants' Fujian Province. The RAD noted that the Applicants

provided no documents to support their claims of arrests or persecution of Roman Catholics in Fujian. Therefore, the RAD found that, on a balance of probabilities, the Applicants would be able to practice Roman Catholicism without being persecuted if they were to return to live in Fujian Province in China.

## **Issues**

[22] The Applicants raise two issues with the RAD decision.

- 1) Did the RAD make unreasonable credibility assessments?
- 2) Is the *sur place* assessment reasonable?

## **Standard of Review**

[23] The presumptive standard of review is reasonableness, and that presumption is not rebutted here (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10 and 17) [*Vavilov*].

[24] Credibility assessments of the RAD are reviewed on a reasonableness standard (*Isugi v Canada (Citizenship and Immigration)*, 2019 FC 1421, para 24; *Singh v Canada (Citizenship and Immigration)*, 2019 FC 1375, para 20; *Karki v Canada (Citizenship and Immigration)*, 2019 FC 1294, para 46).

[25] “[J]udicial review considers not only the outcome, but also the justification for the result (where reasons are required)” (*Canada Post Corp v Canada Union of Postal Workers*, 2019 SCC 67, at para 29).

[26] The Court must “ask whether the decision bears the hallmarks of reasonableness - justification, transparency and intelligibility - and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” *Vavilov*, at para 99) to determine if a decision is reasonable.

### **Analysis**

1) *Did the RAD make unreasonable credibility assessments?*

[27] The Applicants take issue with the RAD’s credibility finding that the lack of a medical book undermines their claimed religious affiliation. The Applicants say that the source of the information regarding medical book relied upon by the RAD relates to procedures in Guangdong Province in relation to family planning matters. The Applicants argue that this information does not apply to them.

[28] On this issue, the Applicants also argue that the RAD cannot simply defer to the RPD’s findings, but was required to conduct its own independent assessment of the evidence.

[29] The Applicants are correct that the RAD is required to conduct an independent assessment of the evidence (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93,

para 103 [*Huruglica*]. However the RAD does not fail to independently assess the evidence simply because it defers to the RPD's finding after conducting its own assessment (*Demberel v Canada (Citizenship and Immigration)*, 2016 FC 731, see paras 41 and 50; *Tejuoso v Canada (Citizenship and Immigration)*, 2019 FC 903, para 31 [*Tejuoso*]).

[30] The RAD's assessment is independent when its reasons clearly indicate when it defers to the RPD's finding and why (*Tejuoso*, para 31). The RAD conducts an independent analysis when it reviews the RPD's findings, the Applicants' submissions, and it references the documentary evidence to confirm the RPD decision (*Abdi v Canada (Citizenship and Immigration)*, 2019 FC 54, para 35; *Fermin Mora v Canada (Citizenship and Immigration)*, 2018 FC 521, para 35; *Moussounda v Canada (Citizenship and Immigration)*, 2018 FC 506, para 8).

[31] In this case, after a review of the evidence the RAD concluded:

... that the RPD did not misapply or misinterpreted the documentary evidence. Although the documentation notes about the lack of reliability of written notes, the documentation clearly states that every patient is expected to carry their own medical booklet. No such booklet was produced in this case to verify the Appellant's allegations. These allegations were the basis for her allegedly joining a Roman Catholic underground church in China. Without probative documentation to support her allegations, the RAD finds, on a balance of probabilities, that the Appellant did not begin the practice of Roman Catholicism in China as alleged.

[32] In my view, the RAD provided clear and comprehensive reasons for rejecting the PA's testimony regarding the medical booklet. In the circumstances, the RAD did not fail to state in clear and unmistakable terms why her testimony was not credible. The RAD rather found that her testimony contradicted the documentary evidence.



[33] Although the medical booklet and religious conversion appear to be discrete topics and issues, the PA's evidence that she converted to Catholicism while hospitalized connected these factors. Since the PA said she converted while in hospital, it was reasonable for the RAD (and the RPD) to expect her to have evidence confirming her hospitalization.

[34] In *Punniamoorthy v Canada (Minister of Employment & Immigration)*, 113 D.L.R. (4th) 663, at para 10, the Federal Court of Appeal confirmed the principle that a decision-maker must "give reasons in clear and unmistakable terms for casting doubt upon the claimant's credibility."

[35] A credibility assessment is defective when couched in vague and general terms (*Hilo v Canada (Minister of Employment and Immigration)*, 130 NR 236, [1991] FCJ No 228 (Fed. C.A.)). It should be based on neither speculation nor conjecture (*Diallo v Canada (Citizenship and Immigration)*, 2013 FC 959, para 27). None of these factors are at play here; the RAD's reasoning is sound and based upon the evidence.

[36] Overall, the Applicants have not shown that the RAD's assessment of the medical booklet is unreasonable. In essence, the Applicants are attacking how the RAD weighed the evidence. However, it is not the role of this Court to re-weigh the evidence unless the RAD's conclusions were "made in a perverse or capricious manner" or without regard for the material before it (*Lawal v Canada (Citizenship and Immigration)*, 2015 FC 155, at para 17). There are no such issues here, and therefore no basis on which the Court should (or may) intervene.

2) *Is the sur place assessment reasonable?*

[37] The Applicants argue that the RAD's *sur place* finding is unreasonable in two respects.

First, the Applicants submit that the RAD failed to make a finding concerning the genuineness of their religious worship in Canada. They allege that the RAD's conclusion that further documentation was required to establish their attendance at the church in Canada is unreasonable.

[38] Second, they argue that the RAD's finding that it is safe to practice as Roman Catholics in China is unreasonable and not supported by the country condition evidence.

[39] The RAD concluded that given the limited evidence, it was unable to make a finding on the genuineness of their practice as Roman Catholics in Canada. In *Chen v Canada (Citizenship and Immigration)*, 2017 FC 650, at paras 18-19, the Court held that it was open to the RAD to give the Applicants activities in Canada little weight because letters from a priest are insufficient to establish the genuineness of the Applicants' faith. In this case, although the RAD found that the Applicants had not demonstrated their faith in Canada, the RAD nonetheless considered their religious practises in Canada would put them at risk of persecution upon returning to China.

[40] On their risk in China, the Applicants argue that the RAD failed to properly consider contradictory evidence of religious persecution in China when it concluded that the Applicants:

... would be able to practice Roman Catholicism, worshipping in the Roman Catholic congregation of their choosing, if they were to return to Fujian Province in China, and that there is not a serious possibility that they would be persecuted for doing so.

[41] The Applicants allege that the RAD erred in relying on selective documentary evidence and failed to properly consider more recent evidence of religious persecution in China.

[42] I disagree. Here the RAD addressed the documentary evidence regarding persecution of Roman Catholics in Fujian Province at length, but found no information to support the Applicants' claim on this basis.

[43] Further, the Applicants' argue that the RAD should not speculate on how China enforces its law (*Wang v Canada (Citizenship and Immigration)*, 2018 FC 1124, at para 39). However, as in *Luo v Canada (Citizenship and Immigration)*, 2019 FC 823, at para 42, the RAD had made negative credibility findings based on the overall context, not just on the basis that there was little proof the PSB was interested in the Applicants. The RAD's finding on the issue of religious conversion is also relevant. Accordingly, the RAD's decision concerning the absence of appropriate documentation from the PSB, indicating to the Applicants that they committed illegal actions in China, is based on the overall context around the negative credibility findings of the Applicants' evidence. Consequently, the RAD's decision on this issue is reasonable.

[44] Here, the Applicants did not establish that they would be persecuted as Roman Catholics in Fujian Province in China.

[45] This application for judicial review is dismissed.

[46] There is no question for certification

**JUDGMENT IN IMM-1837-19**

**THIS COURT'S JUDGMENT is that** this judicial review is dismissed. There is no question for certification

"Ann Marie McDonald"

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Judge

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

**DOCKET:** IMM-1837-19

**STYLE OF CAUSE:** HUI ET AL v MINISTER OF CITIZENSHIP AND IMMIGRATION

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