Federal Court  Cour fédérale

Date: 20200408

Docket: IMM-2264-19

Citation: 2020 FC 500

Ottawa, Ontario, April 8, 2020

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

SHAOLING CAO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This case concerns the decision of a Senior Immigration Officer (the "Officer") dated March 1, 2019, refusing the Applicant's application for a Pre-Removal Risk Assessment ("*PRRA*") under section 112 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[2] For the following reasons, the Officer's decision is reasonable. This application for judicial review is dismissed.

II. **Facts**

[3] Ms. Shaoling Cao (the "Applicant") is a citizen of China. In August 2015, the Applicant entered Canada and claimed refugee protection based on her claim that she was a Falun Gong practitioner. In February 2016, the Refugee Protection Division ("RPD") refused her claim, finding that the Applicant was not a credible witness. In October 2016, the Applicant failed to appear for an interview with the Canada Border Services Agency ("CBSA"), and an arrest warrant was issued against her. The Applicant was arrested on December 12, 2018, and was offered the opportunity to apply for a PRRA, which she did on January 2, 2019.

[4] In her PRRA application, the Applicant alleged a *sur place* claim that she now faces risk from loan sharks in China due to her father's gambling debts. She alleged a fear that the loan sharks would harm her in order to threaten her father. The Applicant also claimed that she became depressed due to these fears and due to her arrest by CBSA, following which she decided to convert to Christianity on December 23, 2018.

[5] On March 1, 2019, the Officer refused the PRRA application, concluding that the Applicant would not face risk as defined in sections 96 or 97 of the *IRPA*. The Officer found that the Applicant had not rebutted the presumption of state protection, as the country condition evidence did not establish that Chinese authorities could not assist the Applicant regarding her alleged fear of the loan sharks. The Officer concluded that state protection in China "continues

to be operationally adequate". According to the Officer, as adequate state protection would be available, this finding was fatal to the Applicant's claims under both sections 96 and 97 of the *IRPA*.

[6] On the Applicant's claims of depression, the Officer determined that the Applicant did not provide sufficient evidence on two key matters. First, the Officer found insufficient evidence to establish that the Applicant currently suffers from depression. Second, the Officer found that the Applicant had failed to demonstrate the lack of treatment options in China.

[7] The Officer also noted statements in the PRRA application that referred to threats from Sri Lankan authorities. After reviewing the record, the Officer found that these statements were likely entered in error and did not pertain to the Applicant. Nevertheless, because the Applicant had marked "Yes" and "China" in response to a question asking whether she was wanted by state authorities in any country, the Officer reviewed the record for relevant evidence to support this claim. The Officer concluded that the Applicant had failed to substantiate her response to this question.

III. **Issues and Standard of Review**

[8] The issue on this application for judicial review is whether the Officer's decision is reasonable, and in particular:

A. Did the Officer err in assessing the Applicant's *sur place* claim?

B. Did the Officer err in analyzing state protection?

C. Did the Officer err by presuming that the Applicant was wanted by Chinese authorities?

D. Did the Officer err in discounting or ignoring the Applicant's supporting documents without acknowledging them or providing sufficient reasons?

[9] Prior to the Supreme Court's recent decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII) [*Vavilov*], the reasonableness standard applied to the review of a PRRA officer's decision: *Azzam v Canada (Citizenship and Immigration),* 2019 FC 549 (CanLII) at para 13. There is no need to depart from the standard of review followed in previous jurisprudence, as the application of the *Vavilov* framework results in the same standard of review: reasonableness.

[10] As noted by the majority in *Vavilov*, "a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker," (*Vavilov* at para 85). Furthermore, "the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency," (*Vavilov* at para 100).

IV. **Analysis**

[11] The Applicant alleges that the Officer erred in the following ways: (A) the Officer unreasonably assessed the Applicant's *sur place* claim based on her mental health, her Christian faith, and her alleged fear of loan sharks; (B) in analyzing state protection, the Officer failed to assess the Applicant's personal risk, made a veiled credibility finding, and failed to conduct an oral hearing; (C) the Officer presumed that the Applicant was wanted by Chinese authorities; and (D) the Officer discounted or ignored the Applicant's supporting documents without acknowledging them or providing sufficient reasons.

A. *Sur Place Claim*

(1) **Mental health**

[12] The Applicant alleges that the Officer analyzed her mental health from the wrong perspective. The Officer found that she had failed to demonstrate (i) that she currently suffers from depression, and (ii) that treatment was not available to her in China. The Applicant argues that the analysis should have focused on the prospective risk associated with her mental condition as an element of risk. To support this argument, the Applicant cites *Nagarasa v Canada (Citizenship and Immigration)*, 2018 FC 313 [*Nagarasa*] at paras 26 to 28, in which this Court raised concerns with a PRRA officer's treatment of an applicant who had attempted suicide and suffered from depression. The Applicant emphasizes that she is not claiming that she currently experiences depression. Instead, she is claiming that she previously suffered from

depression when she was in China due to her father's gambling, and she fears that returning to China will trigger this depression.

[13] The Applicant further argues that her mental health is likely to deteriorate due to the stress associated with removal. She submits that the Officer should have considered the difference between the harm of removal and the treatment available in China *(Shah v Canada (Citizenship and Immigration),* 2011 FC 1269 (CanLII) [*Shah*]). When an officer is faced with evidence of risk of suicide resulting from removal itself, the officer must "determine whether putting the Applicant through removal and its potential for possibly leading to suicide amounted to undue, undeserved or disproportionate hardship" (*Shah* at para 58).

[14] At the outset, the Respondent notes that the Applicant's written argument erroneously refers to "irreparable harm" at several points, which is not the relevant test for an officer considering risk under sections 96 or 97 of the *IRPA*.

[15] The Respondent submits that the Applicant failed to meet her onus to establish the risks that she alleges. The Officer concluded that the Applicant had failed to demonstrate that she is currently suffering from depression. The Respondent argues that this conclusion was reasonable due to the insufficiency of the evidence.

[16] The only objective evidence was a certificate from a physician in China, dated February 2015. The Officer noted that this document was a preliminary diagnosis of "recurrent brief depression", and the physician recommended that the Applicant rest and not overwork. The

Respondent argues that the date and content of this document, together with the lack of evidence that the Applicant ever sought further treatment in China or in Canada, allowed the Officer to reasonably conclude that the Applicant had failed to sufficiently prove that she currently suffers from depression.

[17] The Respondent also submits that the *Nagasara* decision does not assist the Applicant because in that case, the Court's concerns centered around the officer's sensitivity to mental health issues. Instead, to engage sections 96 and 97 of the *IRPA*, the Respondent argues that an applicant would have to show that he or she would not be able to receive medical care due to a Convention ground or due to specific targeting.

[18] The Respondent submits that the Officer reasonably considered whether the Applicant could obtain treatment in China. The Officer found no evidence to suggest otherwise—in fact, the certificate of diagnosis submitted by the Applicant shows that she was able to obtain medical assistance for her previous experience with depression. For these reasons, the Respondent submits that it was open to the Officer to conclude that the Applicant failed to show that she would not be able to access treatment in China.

[19] In my view, the Officer reasonably considered the Applicant's claim that returning to China would trigger her depression, and analyzed whether the Applicant could obtain treatment in China. I am not persuaded by the Applicant's argument that the Officer unduly focused on her current or past mental health, without considering the risk associated with a potential return to China. The Officer found little evidence to suggest that the Applicant would be denied treatment

or care based on Convention grounds. The Officer also noted, and I agree, that subsection 97(1)(b)(iv) of the *IRPA* precludes findings of risk based on a country's inadequate health or medical care.

[20] Furthermore, the decision in *Nagarasa* does not assist the Applicant, as it can be distinguished on the facts. In *Nagarasa*, a key issue concerned the PRRA officer's treatment of the claimant's depression and attempted suicide. The officer had concluded that "the risk of self-harm or suicide is speculative and controllable by the applicant's own actions", but the Court found this to be unreasonable because self-harm or suicide are "not 'controllable' by a person who contemplates taking his or her own life" (*Nagarasa* at paras 26-28). By contrast, the Officer made no such findings in the case at bar. Instead, the Officer considered whether the Applicant could obtain mental health treatment in China in the event that she required it, and reasonably found no evidence to suggest that she could not.

(2) **Christianity**

[21] The Applicant argues that the Officer acknowledged her faith, but did not consider the prospective risk should she return to China as a Christian. Although the Applicant's PRRA application does not explicitly claim a risk of persecution based on her Christian faith, she claims that she prepared her PRRA submissions while self-represented. In her view, this means the Officer had a heightened responsibility to analyze all of the information and risk factors in the Applicant's application. To support this argument, the Applicant cites this Court's decision in *Kovac v Canada (Citizenship and Immigration)*, 2015 FC 497 (CanLII) at para 6.

[22] Given that the Officer accepted her Christian faith, the Applicant argues that her risk of persecution was "evident" and "easily established" based on the documentary evidence. To support her claim of persecution, the Applicant cites several items of country condition evidence that report persecution of religious groups and, in particular, abusive practices directed at Christian communities in China. The Applicant submits that the Officer ignored the key question of whether she will be able to freely practice her religion upon return to China. In other words, the Officer failed to consider the harm that the Applicant would face due to her religion if she returned to China.

[23] The Respondent submits that the Officer did not need to address any risks that the Applicant may face as a Christian in China because her PRRA application did not allege that she faced any such risk. The onus was on the Applicant to set out her alleged risks and provide an evidentiary basis establishing that she would be at risk. In the Respondent's view, although the Applicant provided evidence to suggest that she began attending a church approximately three weeks before filing her PRRA materials, she tendered no submissions to suggest that (1) she feared practicing Christianity in China; (2) she intended to continue practicing Christianity in China; (3) she intended to continue attending church; or (4) she would be unable to practice her faith at a state-sponsored church in China. The Applicant simply did not provide a basis for the Officer to consider that the Applicant would be persecuted in China. She only stated that she had recently begun attending a church in Canada.

[24] Although the Applicant claims that the country condition evidence alone should have been sufficient to establish her risk of persecution, the Respondent argues that country conditions

must be linked to the applicant's situation to establish a personal risk. This Court has noted that "the fact that the documentary evidence shows that the human rights situation in a country can be problematic does not necessarily mean that there is a risk to a particular individual," *(Li v Canada (Citizenship and Immigration)*, 2009 FC 1225 (CanLII) [*Li*] at paras 26-27; *Ahmad v Canada (Minister of Citizenship and Immigration)*, 2004 FC 808 (CanLII); *Rahim v Canada (Minister of Citizenship and Immigration)*, 2005 FC 18 (CanLII)). In the *Li* decision, the applicant alleged risk given his practice of Falun Gong and Christianity, but the Court upheld the PRRA decision, notably because the applicant had not provided convincing evidence to establish that he would face risk in China as a Christian.

[25] Moreover, the Respondent notes that the country condition documents for China do not establish that all Christians are at risk. According to the UK Home Office, the treatment of Chinese Christians "is unlikely to amount to persecution". Therefore, the Respondent argues that the country condition documents alone are insufficient. The onus was on the Applicant to adduce evidence of the alleged risks, and it was open to the Officer to find that she had not met this onus.

[26] In my view, the Applicant failed to meet her obligation, as she did not provide a basis for the Officer to consider whether she would be at risk as a Christian in China. It was reasonable for the Officer to dismiss the PRRA application without addressing this risk.

[27] It is well established that the onus falls on the applicants to advance their allegations of risk, and "[i]f the evidence is insufficient, the applicant must bear the consequences" *(Lupsa v*

Canada (Citizenship and Immigration), 2007 FC 311 (CanLII) at paras 12-13; *Perampalam v Canada (Citizenship and Immigration)*, 2018 FC 909 (CanLII) at para 17). The Officer only had basic information that addressed the Applicant's recent conversion to Christianity.

[28] I do note that it is incumbent on PRRA officers to "consider risk grounds that are apparent on the record, even if these are not specifically raised by the applicant," *(Jama v Canada (Citizenship and Immigration)*, 2014 FC 668 (CanLII) [*Jama*] at para 19; *Pastrana Viafara v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1526 (CanLII) [*Viafara*] at paras 6-7). The Officer acknowledged that the Applicant claims to have converted to Christianity, but as the Respondent argued, this claim does not create a risk ground that is "apparent on the record".

[29] To this end, there are evidentiary gaps that render the Christianity ground of risk sufficiently opaque. First, the Officer had no evidence to suggest that the Applicant feared practicing Christianity in China, or that she even intended to continue practicing Christianity in China. Second, contrary to the Applicant's arguments, the country condition evidence did not conclusively establish that Christians in China face persecution.

[30] In this sense, the present case can be distinguished from *Jama and Viafara*. In those cases, the applicants' profiles fit an "alarming risk ground" reflected in the country condition evidence (*Jama* at para 24). In *Jama*, the applicant was "a young male returning to or through al-Shabaab held territory after living in the West for many years", and in *Viafara* the applicant was "the common-law spouse of […] a former military conscript" in Colombia, a group

frequently targeted by the Revolutionary Armed Forces of Colombia ("FARC"). In both cases, the applicant's profile aligned with a risk ground that was clearly apparent in the country condition evidence. Here, on the other hand, the persecution of Christians is not at all apparent in the country condition evidence.

[31] Therefore, I find that the Officer did not err in not addressing the risk that the Applicant may face as a Christian in China. The Applicant failed to state the allegations and evidentiary basis necessary to analyze whether such a risk exists.

(3) **Alleged fear of loan sharks**

[32] The Applicant argues that the Officer erroneously assessed the documentary evidence on her alleged fear of loan sharks, and that the Officer failed to analyze this claim under sections 96 or 97 of the *IRPA*. In particular, she notes that the analysis under subsection 97(1) "necessitates an individualized inquiry," (*Prophète v Canada (Citizenship and Immigration)*, 2009 FCA 31 (CanLII) at para 7). The Applicant submits that the Officer failed to consider the Applicant's heightened risk, which members of the general public in China do not face. She argues that, if the Officer accepted that the Applicant genuinely faces threats from loan sharks, this serves to establish that she fears persecution and faces a risk to her life.

[33] In my view, the Applicant has mischaracterized the Officer's findings. The Officer did indeed analyze the Applicant's alleged fear of loan sharks under section 97 of the *IRPA*. The Officer's key finding was not on the existence of risk, but rather on state protection. The Officer's dominant conclusion reads as follows:

> Since I find adequate state protection is available to the applicant in China, I note that this finding is fatal to the applicant's claims under both sections 96 and 97 of the IRPA.

[34] As the Officer notes, a finding of adequate state protection "precludes refugee protection status" *(Lakatos v Canada (Citizenship and Immigration)*, 2018 FC 367 (CanLII) at para 18; *Canada (Citizenship and Immigration) v Foster*, 2016 FC 130 (CanLII) at para 25; *Canada (Citizenship and Immigration) v Neubauer*, 2015 FC 260 (CanLII) at para 23).

[35] Therefore, I find that the Officer's reasons on this issue is reasonable.

B. *State Protection*

[36] The Applicant submits that the Officer erred by failing to consider country condition evidence, by making a veiled credibility finding, and by failing to conduct an oral hearing.

[37] The Applicant points to country condition evidence that, in her submission, shows state protection is not available for victims of loan sharks. She emphasizes the following excerpt:

> There is limited information on police protecting, or not protecting, people from violence from money lenders. Informal lending is widespread in China, including in Fujian, and "on the whole, the government has turned a benevolent eye toward illicit finance."

[38] The Applicant also alleges that the Officer made a veiled credibility finding, and failed to afford her an opportunity to address concerns regarding state protection by way of an oral

hearing. She submits that an oral hearing was required in this case by a combined operation of subsection 113(b) of the *IRPA* and section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("*IRPR*").

[39] The Applicant argues that "because no evidence was before the [Officer]" on state protection, it was incumbent on the Officer to initiate oral proceedings. She submits that the Officer erred in finding adequate state protection without fully canvassing or considering (i) whether the Applicant could viably seek such protection in the first place, or (ii) whether there was evidence that China offered such protection to those in the Applicant's position.

[40] The Respondent argues that the Applicant failed to rebut the presumption of state protection. The Respondent states the general presumption that a state is able to protect its citizens (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 [*Ward*]). The Respondent also submits that, most significantly for this case, it is well-established that the onus is on the Applicant to provide clear and convincing evidence that the state would offer her inadequate protection when approached: *Ward*; *Flores Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 (CanLII) at paras 18-19; *Samuel v Canada (Citizenship and Immigration)*, 2008 FC 762 (CanLII) at para 10.

[41] The Respondent argues that the Officer considered the country condition evidence concerning state protection from moneylenders, and concluded that China has an extensive police presence and that there was limited evidence on whether the police provided protection to individuals who suffered from violence from moneylenders. It is up to the Applicant to adduce

additional “clear and convincing” evidence that the police would be unable or unwilling to assist her.

[42] I agree with the Respondent that the Applicant has failed to rebut the presumption of state protection. The Applicant seems to have misunderstood her obligation in the state protection analysis, especially when she claimed that the Officer erred by failing to assess “whether there is evidence that China offers such protection to persons in the Applicant’s position”. The presumption of state protection requires the Applicant, not the Officer, to produce this evidence.

[43] Although the Applicant argued that the country condition documentation did not support the presence of adequate state protection, I find that the evidence she cites is inconclusive and vague.

[44] I have difficulty deciphering the Applicant’s argument on the veiled credibility finding and the need for an oral hearing. The Applicant does not identify the veiled credibility finding, nor does she explain how the factors for an oral hearing, as prescribed in section 167 of the *IRPR*, are engaged in this case.

[45] For the reasons above, the Officer’s findings on state protection are reasonable.

C. *The Presumption that the Applicant was Wanted by Chinese Authorities*

[46] In the decision, the Officer found that the Applicant had failed to demonstrate that she is, or was, wanted by police, military, or other authorities in China. The Applicant argues that the

Officer should not have considered whether the record contained evidence that Chinese authorities had issued any warrants or summons against her. The Applicant claims that she did not suggest that Chinese authorities had issued a summons or warrant against her, so it is unclear why the Officer analyzed this question. The Applicant alleges that this analysis is inappropriate, and that it tainted the Officer's assessment of her risk; therefore it rendered the decision unreasonable.

[47] The Respondent argues that no such error exists. In her PRRA application, the Applicant had marked that she was wanted by the police or military in China. Given this claim in the application, the Officer's analysis was entirely appropriate, and the Applicant cannot fault the Officer for addressing a claim she herself made in her application.

[48] I agree with the Respondent. As the Officer notes, the Applicant completed her PRRA application by checking "Yes" to whether she was wanted by state authorities, and she specified the state as China. However, immediately below that in the form, she included other statements regarding Sri Lanka. In my view, these references to Sri Lanka are clerical errors, as I see nothing in the record regarding risk in Sri Lanka, let alone any travel history to Sri Lanka. Nevertheless, the Officer treated the remainder of the Applicant's answers as proper answers, concluding that the claim was not supported by the record. The Applicant cannot fault the Officer for analyzing claims found in her own documentation. I find that the Officer's analysis was reasonable.

D. *Supporting Documents*

[49] The Applicant alleges that the Officer selectively ignored certain pieces of critical evidence that led directly to the alleged risks, and argues that this renders the Officer's reasons unreasonable. In the Applicant's view, the Officer's approach is perverse and shows a complete disregard for the evidence.

[50] First, regarding her mental health, the Applicant argues that the Officer ignored her affidavit and the personal statements from her family. Second, on state protection, the Applicant alleges that the Officer ignored her family's personal statements where they indicated that state protection would not be available for the Applicant. Third, concerning her conversion to Christianity, the Applicant submits that the Officer analyzed the documentary evidence, but failed to analyze her risk of persecution if she returned to China as a Christian.

[51] The Respondent argues that the Officer reasonably considered the Applicant's affidavit and the letters from her family members. The Respondent submits that it was open to the Officer to find this evidence insufficient to establish her mental health status, notably because the Applicant and her family are not medical professionals, so their opinions on her mental health carry minimal weight. Moreover, the statements from her family contain only brief comments about the Applicant's previous experiences with depression and about the possibility of a future likelihood of depression. In the Respondent's submission, the Officer reasonably assessed this evidence as insufficient to demonstrate that the Applicant currently suffers from depression.

[52] In my view, the Officer properly considered the evidence and supporting documentation. It is well established that an officer is presumed to have considered all of the evidence even if she does not refer to each individual piece of evidence in her reasons *(Hassan v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 946 (FCA); *Ekpenyong v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 1245 (CanLII) at para 20).

[53] The Officer's reasons show that these documents were considered, but deemed insufficient because they did not fill the evidentiary gaps identified in the Officer's reasons. For example, the documents did not suggest that the Applicant would be unable to receive mental health treatment in China. They also did not suggest that state protection is inadequate.

[54] The Officer reasonably assessed the evidence, and found the supporting documentation insufficient to support the Applicant's claims.

V. **Certified Question**

[55] Counsel for each party was asked if there were any questions requiring certification. They each stated that there were no questions for certification and I concur.

VI. **Conclusion**

[56] For the foregoing reasons, the Officer's decision is reasonable. Accordingly, this application for judicial review is dismissed.

JUDGMENT in IMM-2264-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Subuhi Siddiqui	FOR THE APPLICANT
Amy King	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lewis & Associates Barristers & Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT