

Federal Court



Cour fédérale

Date: 20210629

Docket: IMM-3906-20

Citation: 2021 FC 685

Ottawa, Ontario, June 29, 2021

PRESENT: Mr. Justice Pentney

BETWEEN:

ZHIMING ZHOU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Zhiming Zhou, challenges the decision of the Refugee Appeal Division [RAD] dated July 27, 2020, confirming the decision of the Refugee Protection Division [RPD] that denied his claim for refugee status in Canada.

I. Background

[2] The Applicant is a citizen of China who claims to fear persecution from the Public Security Bureau [PSB] because of his membership in the Three Grades of Servants Christian sect. He also advances a *sur place* claim, because after his arrival in Canada he began to attend a Pentecostal church, and he fears persecution as a Christian if he is sent back to China.

[3] The Applicant says that his cousin introduced him to the Three Grades of Servants church in May 2016, and he decided to join because it helped him to overcome his grief and depression following the death of another cousin in a mine explosion. He claims that he and his cousin went into hiding in June 2017, after the PSB arrested a fellow church member. He then decided to flee China. The Applicant says in July 2017, he learned that the PSB had gone to his cousin's home to search for her, and that it had also visited another church member's residence. A family member helped him escape China with the assistance of a smuggler.

[4] The Applicant arrived in Canada on September 23, 2017 on a temporary resident visa. He says that in November 2017, he learned that the PSB had arrested his cousin in China and it had attended his home to look for him. Accordingly, he decided to seek refugee protection here.

[5] The RPD rejected his claim on the basis of credibility concerns. It concluded that the Applicant could not explain the beliefs or practices of his church and it therefore found that he had failed to establish that he was a member of the church. In addition, the RPD found that inconsistencies in the Applicant's testimony regarding other events in China further diminished his credibility.

[6] The Applicant appealed, but the RAD affirmed the RPD decision. The RAD accepted the new evidence submitted by the Applicant, including a letter from his wife in China as well as newspaper articles regarding religious repression in China. However, the RAD declined to hold an oral hearing because it found this evidence did not affect the determinative issue, namely whether the Applicant had demonstrated the sincerity of his beliefs and his membership in the church.

[7] The RAD conducted its own review of the evidence, and concluded that the Applicant had not established that he was a member of the church and therefore the credibility of his claim that he was wanted by the PSB was called into question. The RAD noted that the Applicant had been asked a number of open-ended questions about his religion both by the RPD and by his counsel, but was only able to provide its name, the names of the Three Servants as well as a church leader, and that it had been labelled an illegal cult by Chinese authorities. He could not describe any of the religion's beliefs or practices.

[8] The RAD also noted that several credibility findings made by the RPD were not challenged on appeal, including the lack of clarity regarding the Applicant's relationship to the relative who introduced him to the church, as well as inconsistencies in his testimony about: (a) when he learned that the Three Grades of Servants Christian sect was an illegal religion in China; (b) the arrest of one of the members of the church; and (c) the time when he went into hiding after the PSB raid.

[9] Based on this, the RAD found that the Applicant was not a person of interest for the PSB, and it therefore gave no weight to the arrest notice of the Applicant's cousin, which it found to be not authentic. The RAD found that the negative credibility findings about the Applicant's

membership in his church outweighed any of the supportive evidence he had provided. In particular, the RAD discounted the new letter provided by his wife that relayed information about his cousin's release from detention and the PSB's continued interest in him.

[10] The Applicant seeks judicial review of this decision.

II. Issues and Standard of Review

[11] The only issue is whether the RAD's decision is reasonable.

[12] A RAD decision on credibility is to be assessed on a standard of reasonableness, as described in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65

[*Vavilov*] (see *Adefisan v Canada (Immigration, Refugees and Citizenship)*, 2021 FC 359 at para 10).

[13] Under the *Vavilov* framework, a reviewing court "is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints" (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 2 [*Canada Post*]). The burden is on the Applicant to satisfy the Court "that any shortcomings or flaws relied on... are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100, cited with approval in *Canada Post* at para 33).

III. Analysis

[14] The Applicant submits that the RAD's decision is unreasonable because of a fatal flaw that runs throughout its analysis, namely the conflation between the sincerity of the Applicant's religious beliefs and the question of whether he is at risk in China. The Applicant submits that the RAD erred in treating the two as synonymous, and this error undermines its analysis of the key issues.

[15] The Applicant points to a number of deficiencies in the RAD's analysis. He submits that the RAD's decision is unreasonable because, in assessing the sincerity of his religious beliefs, it failed to take his personal circumstances – which are undisputed – into account. In particular, he notes: (a) he has only 9 years of education and worked as a kitchen helper; (b) he was a member of the Church for only 7 months and was unable to continue practicing in Canada given the sect's lack of a presence in Toronto; and (c) approximately one year had elapsed since his arrival to Canada (when he was an active member) and the RPD hearing in August 2018.

[16] The Applicant submits that the RAD demanded a knowledge of doctrine that was beyond his capabilities and that its failure to consider his answers to the questions about his religious beliefs in the context of his personal circumstances is unreasonable. The Applicant points out that he went to the church to find solace after his cousin's death, not because he wanted to study theology. He submits that the RAD conducted the kind of analysis that has been found to be unreasonable in prior cases, citing *Huang v Canada (Citizenship and Immigration)*, 2012 FC 1002 [*Huang*]; and *Lin v Canada (Citizenship and Immigration)*, 2012 FC 288 [*Lin*].

[17] Further, the Applicant contends that the RAD was inconsistent in describing the “core” of his claim, and this calls into question whether the RAD actually engaged with the key elements of his claim. He points to two different passages in the RAD decision. At paragraph 21 of its decision, the RAD states “[t]he core of the claim concerns whether or not the [Applicant] is sincere in his beliefs as a follower of the Three Grades of Servants Christian sect.” However, paragraph 26 reads: “[t]he [Applicant] alleges that he is being sought by the PSB because of his membership in the Three Grades of Servants church while in China. This is the core of his claim, and it remains the [Applicant’s] burden to prove his claim; namely, his religious identity as a member of this faith.” The Applicant submits that these are inconsistent.

[18] In addition, the Applicant argues that the RAD’s rejection of the evidence he submitted in support of his claim is unreasonable. He says that two examples buttress this argument.

[19] First, the Applicant contends that the RAD’s refusal to give any weight to the arrest notice for the cousin who introduced him to the religion is a gratuitous finding based on an incorrect analysis. The RPD had given the arrest notice “moderate weight” (RPD Decision at para 43, Certified Tribunal Record [CTR] at p 32). However, the RAD discounts it entirely, in the following passage: “ the RAD consequently finds that the [Applicant] was not a person of interest to the PSB, and therefore gives the arrest notice no weight and finds that it is not authentic, on a balance of probabilities” (RAD Decision at para 32, CTR at p 10).

[20] The Applicant submits that it is unreasonable to find the arrest notice not authentic based solely on the RAD’s assessment of his credibility, without any examination of the document on its face. He also asserts that the arrest notice related to the cousin, and therefore cannot form a

basis for concluding that he himself was not a genuine member of the church. There is no reasonable link between the two findings.

[21] Second, the Applicant challenges the RAD's rejection of the letter from his wife. That letter states that the Applicant's cousin was released from prison in February 2019, and has had to report to the PSB on a monthly basis since then. It also relays that the cousin stated she was tortured while in jail and that "she was also asked about [the Applicant] and whether she knew that [the Applicant was] still involved in the religious activities" (CTR at p 120). The letter goes on to recount two visits by the PSB to the home of the Applicant's wife, during which they asked whether the Applicant knew the members of the church that the PSB had recently arrested. The Applicant's wife then states that the PSB "said that they would continue to investigate the case and threatened me that if I had concealed any information on you I would be punished." Finally, the letter indicates that the Applicant's cousin had said that he must not return to China because if he did so, he would be arrested and jailed and then subject to monitoring by the PSB.

[22] The RAD found that the letter was insufficient to overcome the credibility concerns and therefore gave it no weight (RAD Decision at para 34, CTR at p 11). The RAD discounted the letter because it had already concluded that the Applicant was not a genuine follower of the Three Grades of Servant Christian sect and that he was not being pursued by the PSB. The key finding of the RAD is set out in the following passage: "However, the [Applicant] has been found to be insincere in his faith as a member of the Christian sect he alleges to follow. Therefore, the RAD finds that this letter does not remedy these existing credibility concerns, and it is given no weight to corroborate the [Applicant's] claim" (RAD Decision at para 36, CTR at p 11).

[23] The Applicant submits that this analysis is unreasonable, because the letter is compelling evidence that he faces a risk from the PSB if he returns to China, whether or not he is found to be a genuine member of the church. The Applicant argues that the RAD's analysis is not based on the contents of the letter, but rather on its previous finding that he was not credible in regards to his membership in the church. According to the Applicant, this is the same unreasonable chain of analysis that the RAD followed when it discounted the arrest notice.

[24] Finally, the Applicant points out that he had submitted other documentary evidence that corroborates the sincerity of his beliefs, including a cremation notice and outpatient records that confirm that his cousin died and that the Applicant suffered depression and anxiety as a result. However, the RAD failed to mention these in its analysis, and this is an unreasonable omission, given that these documents corroborate his narrative and go to the sincerity of his belief.

[25] In summary, the Applicant submits that it is unreasonable for the RAD to find that his knowledge of religious doctrine trumps everything else in the record, or that his lack of detailed knowledge of religious doctrine could somehow justify disregarding compelling evidence that corroborates his claim and confirms that he is wanted by the PSB. The RAD imposed its own unreasonable expectations about the level of knowledge it expected of a "convert" to a religion, rather than judging the sincerity of his beliefs as an ordinary adherent with a limited educational and work background, who attended the church because it gave him comfort and peace. The Applicant argues that the RAD's decision should be overturned because it followed a fatally flawed chain of reasoning.

[26] I am not persuaded.

[27] I agree with the Applicant that the RAD's rejection of the arrest notice on the basis of its previous credibility findings, and without any reference to the contents or form of the document, is unreasonable. There is no doubt that a finding that an applicant lacks credibility because of his or her testimony, especially on key aspects of the claim, can affect a decision-maker's assessment of other evidence brought forward by that individual (*Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 24 [*Lawani*]). However, in this case, it was not reasonable for the RAD to reject the arrest warrant in its entirety without any analysis of the document itself (*Berhane v Canada (Citizenship and Immigration)*, 2011 FC 510 at para 32).

[28] I find that this is not the sort of error that warrants overturning an otherwise reasonable decision. It must be recalled that in *Vavilov*, the majority of the Supreme Court of Canada did not set the bar at perfection:

[100] The burden is on the party challenging the decision to show that it is unreasonable. Before a decision can be set aside on this basis, 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. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision. It would be improper for a reviewing court to overturn an administrative decision simply because its reasoning exhibits a minor misstep. Instead, the court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable.

[29] In this case, the RAD's error in regard to its treatment of the arrest notice is not a "sufficiently serious shortcoming" to warrant overturning the decision because there were many other, independent reasons for the RAD's finding that the Applicant lacked credibility in relation to the core element of his claim, namely the sincerity of his religious beliefs. An important

consideration in this is that while the arrest notice may demonstrate that the authorities believe the cousin to be an adherent of the church, that is not an issue in this case in the sense that the Applicant never claimed that the PSBs mistaken belief put him at risk. Overall, it was not unreasonable for the RAD to find that the documentary evidence did not overcome the deficiencies in the Applicant's evidence regarding his religious beliefs or practices.

[30] I do not agree with the Applicant that the RAD's analysis is marred by its consideration of the sincerity of his beliefs. The RAD's decision shows that it grappled with the essential aspects of his claim, and considered the evidence in light of the applicable legal framework. That is precisely what is required for a decision to be found reasonable under the *Vavilov* framework.

[31] I agree with the Applicant that the jurisprudence cautions the RAD against imposing an unreasonably detailed or sophisticated level of knowledge of religious doctrine when it assesses whether a claimant's religious belief is genuine (see *Bouarif v Canada (Immigration, Refugees and Citizenship)*, 2020 FC 49 at para 7, citing *Gao v Canada (Citizenship and Immigration)*, 2015 FC 1139 at para 26 [*Bouraiif*]). However, in this case, the RAD's decision demonstrates that it did not fall into this error; instead, it considered the evidence as a whole, including the Applicant's lack of knowledge of the religion he claimed to adhere to, as well as other inconsistencies in his evidence.

[32] The RAD's approach in this case can be distinguished from the approaches found to be unreasonable in the cases relied on by the Applicant. In *Lin*, the panel improperly judged the claimant's knowledge against its own standard of what a person in the same circumstances should believe. In *Huang*, the panel considered not only whether the claimant had knowledge of the religion, but also whether those practices were applied to the claimant's daily life and it held

the claimant to a better than average knowledge of the religion. These cases do not compare to the situation here. As the Respondent argued, the law forbids the decision-maker to judge the sincerity of a claimant's beliefs or membership against a religious trivia test, but that is not what the RAD did.

[33] Instead, the RAD's conclusion was a reflection of the fact that the Applicant possessed very limited knowledge of the Three Grades of Servants faith, and gave vague and general answers that did not describe its basic tenets, or his religious practice. In this case, the RAD simply assessed the Applicant's claim to be an adherent to this faith against his failure to provide even basic information regarding his beliefs or practices, despite being given many opportunities to do so under open-ended questioning by both the RPD member and his own counsel. This is the type of credibility analysis that is expressly vested in the RAD, and its explanation of its reasoning is clear and cogent (see *Bouraiif* at paras 10-12).

[34] It is not the role of the Court to second-guess the RAD's credibility determinations or to re-weigh the evidence.

[35] I am also not persuaded that there is any meaningful difference between the two descriptions of the "core" of the Applicant's refugee claim. The only basis for his claimed fear of persecution was his membership in the Three Grades of Servants church, and an examination of these passages, and the decision as a whole, leaves no doubt that the RAD understood this.

[36] Furthermore, the RAD's findings on the Applicant's knowledge are bolstered by its determination that his inconsistent evidence on other matters also undermined his credibility. While the Applicant did not challenge many of the RPD's findings on these points, the RAD

nonetheless conducted an independent review. The RAD's review of the evidence confirmed the RPD's conclusion that the Applicant's testimony on his relationship to his cousin and the timing of when they went into hiding after an alleged PSB raid was vague and inconsistent, and that this undermined his credibility. This is a reasonable conclusion based on the testimony given by the Applicant.

[37] The RAD did not mention the cremation certificate or outpatient medical record, but there is no indication that it ever doubted that the Applicant's cousin had died or that he had experienced depression and anxiety as a result. On this point, I agree with the Respondent that the RAD is "presumed to have considered and reviewed all of the evidence" (*Pjetracaj v Canada (Citizenship and Immigration)*, 2019 FC 1390 at para 17). Additionally, the failure to mention a particular piece of evidence in a decision does not mean that this evidence was ignored and does not constitute an error, in particular where the evidence goes to a point that is not really in dispute (*Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 at para 24).

[38] In regard to the RAD's findings on the wife's letter, I agree with the Respondent that the jurisprudence has consistently found that a claimant's lack of credibility with respect to the central elements of the claim can extend to cast doubt on documentary evidence that is adduced to corroborate the narrative (*Lawani* at para 24; *Abdelgadir v Canada (Citizenship and Immigration)*, 2020 FC 721 at para 18). On this point, "it was open to the RAD to afford no weight to evidence which serves to corroborate a story already found not to be credible" (*Abolupe v Canada (Citizenship and Immigration)*, 2020 FC 90 at para 49, citing *Lawani* at para 24). That is exactly what the RAD did here, and its finding is reasonable in light of the facts and the law.

[39] For these reasons, I find the RAD's decision to be reasonable.

IV. Conclusion

[40] Stepping back to consider the RAD's decision as a whole, I find that it is reasonable, because it is "based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints" (*Canada Post* at para 2).

[41] The RAD found that the Applicant was unable to overcome the credibility concerns created by the combined effect of his almost complete lack of knowledge of the religion he claimed to have joined, together with his inconsistent testimony regarding key events that happened in China that he said substantiated his claimed fear of persecution by the authorities. The RAD's analysis is clear and coherent, it did not fail to consider any of the key evidence on these points, and it is not for the Court to re-weigh the evidence.

[42] I am therefore dismissing the application for judicial review.

[43] Neither party proposed a question of general importance for certification, and I find that none arises in this case.

JUDGMENT in IMM-3906-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question of general importance for certification.

“William F. Pentney”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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