

Federal Court



Cour fédérale

**Date: 20210715**

**Docket: IMM-3810-20**

**Citation: 2021 FC 745**

**Ottawa, Ontario, July 15, 2021**

**PRESENT: The Honourable Mr. Justice Southcott**

**BETWEEN:**

**YUHE ZHU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] This is an application for judicial review of a decision by the Refugee Appeal Division of the Immigration and Refugee Board of Canada [RAD], dated July 27, 2020, which confirmed a decision of the Refugee Protection Division [RPD] that the Applicant, a citizen of China, is not a Convention Refugee or person in need of protection, pursuant to ss 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] As explained in more detail below, this application is allowed, because the RAD employed an unreasonable analysis in concluding that a summons issued to the Applicant by Chinese authorities was fraudulent.

## II. **Background**

[3] The Applicant made a refugee claim in Canada in January 2018 based on a fear of persecution by Chinese state authorities, because of his membership in the Church of Almighty God. The Applicant's father died in a flood in July of 2016. He alleges that, shortly after his father's death, a friend introduced him to the Church of Almighty God. The Applicant states that he began regularly attending a house church, which helped remove the stress he experienced after his father's death.

[4] The Applicant alleges that on July 16, 2017, the house church that he attended was raided by the Public Security Bureau [PSB] during a service. He was able to escape and went into hiding. The Applicant states that the PSB went to his house on July 18, 2017, looking for him. They questioned his wife about his religious activities and whereabouts and told her that he must report to them immediately. He alleges that the PSB left a summons for him with his wife on July 20, 2017, and that the PSB went looking for him at his relative's home. The Applicant also claims that two members of his church were arrested by the PSB.

[5] The Applicant alleges that he subsequently left China with the assistance of a smuggler who helped him obtain a visa to Canada. He left China from the Beijing Airport, using his own

passport, travelling on an Air Canada flight to Toronto. Since arriving in Canada, the Applicant has attended church on a regular basis.

### III. Refugee Protection Division Decision

[6] The Applicant's refugee claim was denied by the RPD, with the determinative issue being his credibility. The RPD found that the Applicant was not a credible witness because his testimony that he escaped China using his own passport was inconsistent with the March 31, 2020 National Documentation Package for China [NDP] concerning the efficiency of the Chinese authorities' systems for monitoring and controlling the exit of citizens from China.

[7] The RPD also found that, on a balance of probabilities, the Applicant is not a genuine member of the Church of Almighty God. The RPD found that his responses to its questions about his faith were very cursory and superficial and that he provided little evidence with respect to his personal relationship with the faith. The RPD took note of two letters from members of the local chapter of the Applicant's church in Canada, attesting to his regular attendance at their church and that he is devout in his beliefs at services. The RPD ascribed little weight to these letters, because the authors were not made available for cross-examination. The RPD found that the Applicant attends church services but has done so solely to buttress his application for refugee protection.

[8] The RPD concluded that the Applicant had not established that he is a devout member of the Church of Almighty God who is wanted by Chinese authorities and explained the Applicant's

lack of credibility on this point meant that his refugee claim must fail, regardless of whether it was based on ss 96 or 97(1) of IRPA. The Applicant appealed the RPD's decision to the RAD.

IV. **Decision Under Review**

[9] In the Decision that is the subject of this application for judicial review, the RAD confirmed the RPD's decision that the Applicant is not a Convention refugee or person in need of protection under ss 96 and 97(1) of IRPA.

[10] The RAD upheld the RPD's finding that the Applicant was not credible with respect to his exit from China. The RAD summarized the Applicant's explanation of his exit from China, that he gave his passport and some money to a smuggler who applied and obtained a Canadian visa for him, that the smuggler accompanied him from Beijing to Toronto, that he showed his passport to an officer at the Beijing Airport who did not scan the passport, and that the smuggler and this officer exchanged words. However, the RAD found that, if the Applicant was being sought in the manner alleged, he would be unable to leave China on his genuine passport.

[11] In arriving at this conclusion, the RAD referred to documentary evidence that Chinese authorities use a vast network of surveillance infrastructure to monitor citizens, referred to as the Golden Shield, but noted that information on the effectiveness of the Golden Shield and its functioning is limited. The RAD also observed that, based on the Applicant's allegations, he would be prohibited from exiting China by the Exit and Entry Administration Law of the People's Republic of China, under which individuals who are sentenced to criminal punishment or who are suspects or defendants in criminal cases are not allowed to exit. The RAD also relied

on documentary evidence that travellers go through several check points at Chinese airports. The RAD, therefore, did not believe the Applicant's evidence with respect to his exit from China, as he testified that he had interacted only once, orally, with an officer while exiting the country.

[12] Additionally, the RAD noted that airlines in China have to collect Advanced Passenger Information from travellers and that this information is collected at the time of purchase of tickets or at check-in and then submitted to Chinese border officials. The RAD found that this was another avenue through which the Applicant's whereabouts could have come to the attention of Chinese authorities.

[13] The RAD concluded that it preferred the documentary evidence over what the RAD described as the "series of implausibilities" that the Applicant was asking it to believe regarding his exit from China. While the RAD recognized that there are reports of corruption and individuals who are wanted by authorities being able to leave China, it found that the Applicant's evidence did not provide for a believable or detailed explanation of how he circumvented the Golden Shield.

[14] The RAD then turned to the credibility of documents that the Applicant had submitted in his application, which were the summons that the PSB allegedly gave to his family, as well as medical documents and a "clarification certificate" pertaining to the Applicant's father's death.

[15] The RAD found that the summons was not reliable. While there were no concerns on the face of the document, the RAD made a negative finding regarding the summons, based on its

earlier finding that the Applicant is not wanted by Chinese authorities because he was able to exit China on a genuine passport. The RAD also found it unlikely that a coercive summons would not have been issued for the Applicant, who had allegedly failed to appear as required by the PSB. Based on these findings, and evidence that fraudulent documents are widespread in China, the RAD concluded that the summons is fraudulent.

[16] The RAD accepted the authenticity of the medical documents and clarification certificate as evidence that the Applicant's father died in a flood. However, the RAD explained that the documents did not establish that the Applicant is a member of the Church of Almighty God, or that he is being persecuted for his membership.

[17] Next, the RAD concluded that the RPD was correct to find that the Applicant is not a genuine member of the Church of Almighty God. The RAD found that the RPD erred in giving the letters from the members of the Applicant's church little weight only because the authors were not witnesses at the RPD hearing. The RAD explained that, if the RPD had issues with the letters, it could have called the authors as witnesses. However, the RAD found that the letters were only evidence of the Applicant's presence at church, not his motivation for attending.

[18] The RAD also agreed with the RPD's finding that the Applicant's testimony about his faith was rote and superficial and provided little evidence on his personal relationship with his faith. The RAD noted that the RPD had asked the Applicant what he liked best about the Church of Almighty God, and he replied that you don't get sick if you live in God's soul and, as long as

you have breath, God will save you. The RAD found these statements too vague for it to find that the Applicant is a genuine believer, as they do not address the central tenets of his faith.

[19] Additionally, the RAD noted that the Applicant responded to a question about whether he spreads the gospel by saying that he had not passed a required test, and that he had not been given a chance to take the test because he had fled China. The RAD found that this was not a reasonable explanation because the documentary evidence was silent on such a test, and if such a test exists, the Applicant could have taken it in Canada.

[20] The RAD therefore concluded that the Applicant is not credible and confirmed the RPD's decision.

V. **Issues and Standard of Review**

[21] The Applicant raises the following as issues in this application for judicial review:

- A. Did the RAD err in finding that the Applicant was not credible with respect to his exit from China?
- B. Did the RAD err in finding that the summons was not genuine?
- C. Did the RAD err in its assessment of the medical documents and clarification certificate?
- D. Did the RAD err in finding that the Applicant was not a genuine practitioner of the Church of Almighty God faith?

VI. Analysis

[22] While the Applicant raises a number of issues for the Court's consideration, my decision to allow this application for judicial review turns on the issue surrounding the RAD's conclusion that the summons, allegedly issued by the PSB and submitted by the Applicant in support of his claim, was fraudulent.

[23] In arriving at this conclusion, the RAD noted country condition evidence that fraudulent documents are widespread in China. The Respondent correctly submits that, while this evidence alone would not be enough to support a finding that the summons was fraudulent, such evidence can be a relevant consideration if there are other reasons to doubt a documents' authenticity (see, e.g., *Lin v Canada (Minister of Citizenship and Immigration)*, 2010 FC 183 at para 21).

[24] While the RAD acknowledged that there were no concerns with this summons on the face of the document, it provided two reasons for doubting its authenticity. First, the RAD relied on its previous conclusion that, because the Applicant was able to exit China on his genuine passport, he was not actually wanted by the Chinese authorities.

[25] I do not consider this to be a reasonable analysis. If genuine, the summons is objective evidence supporting the Applicant's allegations of risk. However, the RAD's chain of analysis is effectively that, because it does not believe that the Applicant is wanted by the authorities, the summons must be fraudulent. In my view, the RAD was obliged to analyse independently the



authenticity of this document (see, e.g. *Iqbal v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1219 at para 8).

[26] Second, the RAD found that the failure of the PSB to issue a compulsory or coercive summons (as opposed to the form of investigative summons allegedly issued to the Applicant) was indicative of a lack of interest by the PSB. Therefore, the RAD reasoned that the summons was fraudulent. The RAD acknowledged that this conclusion amounted to an implausibility finding and that such finding should be made only in the clearest cases (see *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776, [2001] FCJ No 1131 (FCTD) at para 9). The RAD found that there was sufficient evidence before it to make this a clear case.

[27] In other words, the RAD reasoned that the evidence before it supported a conclusion that it was clearly implausible that the PSB would have issued an investigative summons for the Applicant, instead of, or without being followed by, a coercive summons. I agree with the Applicant's submission that the RAD does not explain how this conclusion is supported by the evidence that it refers to in this portion of its analysis.

[28] The RAD relies on evidence in the NDP explaining that, after a raid upon a house church, the PSB documents and stores the identity and other personal details of practitioners, amounting to meticulous documentation of offenders. However, the RAD does not explain how this evidence supports the conclusion that the PSB would have issued a coercive summons to the Applicant.

[29] The RAD also refers to Article 82 of the Public Security and Administrative Punishment Law, which states, “Anyone who refuses to accept the summons without sufficient reasons or evades the summons may be summoned by force.” I accept that this evidence supports a conclusion that, after the Applicant failed to respond to the investigative summons that he says was issued to him, the PSB had the authority to issue a coercive summons. However, this evidence does not support a conclusion that such a step is invariably, or even usually, taken by the PSB. Certainly, this evidence does not support a conclusion that this is one of the clearest of cases, where it is implausible to suggest that the PSB would not have issued a coercive summons.

[30] As explained in *Huang v Canada (Citizenship and Immigration)*, 2019 FC 358 at para 20, this Court has repeatedly warned against making implausibility findings based on assumptions about how Chinese authorities would rationally behave, including whether one would expect them to issue a coercive summons.

[31] I therefore find the RAD’s conclusion, that the summons is a fraudulent document, to be unreasonable. As previously noted, if genuine, the summons represents objective evidence supporting the Applicant’s allegation that he would be at risk if returned to China, because he is being sought by the PSB. Given the significance of this document to the Applicant’s claim, the unreasonable analysis surrounding its authenticity requires that this application for judicial review be allowed and the matter returned to a differently constituted panel of the RAD for re-determination. It is therefore unnecessary for the Court to consider the other issues raised by the Applicant.

[32] Neither party proposed any question for certification for appeal, and none is stated.

**JUDGMENT IN IMM-3810-20**

**THIS COURT'S JUDGMENT is that** this application for judicial review is allowed, and this matter is returned to a differently constituted panel of the Refugee Appeal Division for re-determination. No question is certified for appeal.

"Richard F. Southcott"

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Judge

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

**DOCKET:** IMM-3810-20

**STYLE OF CAUSE:** YUHE ZHU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

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