

Federal Court



Cour fédérale

**Date: 20210929**

**Docket: IMM-4199-20**

**Citation: 2021 FC 1017**

**Fredericton, New Brunswick, September 29, 2021**

**PRESENT: Madam Justice McDonald**

**BETWEEN:**

**LIZHU HE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is a judicial review of a decision of the Refugee Appeal Division (RAD) upholding the decision of the Refugee Protection Division (RPD) who determined that the Applicant is not a Convention refugee or a person in need of protection under sections 96 or 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] For the reasons that follow, this judicial review is dismissed as the decision of the Officer is reasonable and the Applicant has not established any procedural fairness issues that impact the decision.

## **Background**

[3] The Applicant is a citizen of China who sought refugee protection alleging a fear of persecution in China due to her practice of Falun Gong.

[4] In China, the Applicant claims that she was the personal assistant to a government Minister, with whom she began a relationship, and who fathered her son. The Applicant claims that her son was taken by the government and she was told that she would not be able to see the child.

[5] A friend, as a way to console her shortly after the incident, introduced her to Falun Gong.

[6] In July 2015, when the Applicant attempted to see her son again, the Minister informed her that he had been monitoring her, knew of her Falun Gong practice, and had informed the Public Security Bureau (PSB).

[7] The Applicant claims that she went into hiding at her aunt's home. Her parents informed her that PSB came looking for her and left a summons. With the assistance of a smuggler, the Applicant arrived in Canada on August 11, 2015, and made an inland refugee claim in January 2016. She says she continued to practice Falun Gong while in Canada.

[8] After her arrival in Canada, her mother informed her that PSB had come to her home looking for her. Since she has been in Canada, the Applicant has given birth to twin girls. According to the Applicant, this will cause her to face persecution in China for violating the Family Planning Policy.

### **RPD Decision**

[9] On August 16, 2016, the Applicant's claim was rejected by the RPD due to credibility concerns. The RAD subsequently returned the matter to the RPD with directions. On November 7, 2019, the RPD again rejected the Applicant's claim on the basis of credibility. The Applicant appealed this decision to the RAD.

### **RAD Decision**

[10] In considering the appeal from the RPD, the RAD concluded the Applicant was neither a Convention refugee nor a person in need of protection. The RAD found that the RPD did not err in finding that the Applicant was not a genuine practitioner of Falun Gong, nor did they err by drawing a number of negative credibility findings. The negative credibility findings included: failing to list the address where she had resided for several years; indicating that she was married to her current partner on a visa application, while listing herself as single on the claim form; irregularities on her son's birth certificate; and, the fact that she left China on her own passport even though she claims to have been wanted by the PSB.

[11] The RAD found that the RPD did not err in finding that the Applicant did not have a *sur place* claim, and did not err in finding that the Applicant would not face persecution due to alleged violations of the Family Planning Policy.

## **Issues**

[12] The Applicant raises the following issues:

1. Did the RAD breach the Applicant's procedural fairness rights by making new credibility findings?
2. Did the RAD err in assessing the genuineness of the Applicant's Falun Gong practice?

## **Standard of Review**

[13] The standard of review for the procedural fairness issues raised by the Applicant is correctness (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43).

[14] The second issue raised by the Applicant - the genuineness of her religious practice - is considered against the reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]).

## **Analysis**

1. *Did the RAD Breach the Applicant's Procedural Fairness Rights by Making New Credibility Findings?*

[15] The Applicant argues that the RAD made new findings on issues relating to her credibility and was therefore obligated to provide her with an opportunity to respond. The Applicant argues that the RAD findings on the summons, the Falun Gong notebook, and the letters of support from co-practitioners of Falun Gong are all new issues which she should have been given an opportunity to address.

[16] In *Kwakwa v Canada (Citizenship and Immigration)*, 2016 FC 600 [*Kwakwa*] Justice Gascon states at para 24 that while "the RAD is entitled to make independent findings of credibility or plausibility against an applicant, without putting it before the applicant and giving him or her the opportunity to make submissions, [...] this only holds for situations where the RAD does not ignore contradictory evidence or make additional findings or analyses on issues unknown to the applicant".

[17] In *He v Canada (Citizenship and Immigration)*, 2019 FC 1316 [*He*] the following principles were articulated (at para 79):

- the RAD cannot give further reasons based on its own review of the record, if the refugee claimant has not had the chance to address them [...]
- credibility conclusions not raised by the applicant on appeal of the RPD decision amounted to a "new question" on which the RAD had the obligation to advise the parties and offer them the opportunity to make observations and provide submissions [...]
- when additional comments regarding the documents submitted by an applicant in support of [a critical element of their claim], were not raised or addressed specifically by the RPD, the applicant should at least have been given an opportunity to respond to those arguments and statements made by the RAD before the decision was issued [...]

[18] In *Jiang v Canada (Citizenship and Immigration)*, 2018 FC 1064 [*Jiang*] the Chief Justice addressed the ability of the RAD to make additional findings on a known issue without notice to the Applicant as follows:

[17] Issues that are rooted in, or are components of, an existing issue are not "new issues." Rather, "[genuinely] new issues are legally and factually distinct from the grounds of appeal raised by the parties": *R v Mian*, 2014 SCC 54, at paras 30 and 33. Although the RAD in this case raised some additional factual concerns with respect to the summons in question, the basic issue concerning the genuineness of the summons was legitimately before the RAD: *Lin v Canada (Citizenship and Immigration)*, 2017 FC 1175, at para 22. It was therefore entitled to fully explore that issue without convening an oral hearing.

## **Summons**

[19] On the issue of the summons, the Applicant points to paragraph 26 of the RPD decision and argues that the RPD made a limited finding on this issue when it found:

In support of her allegations that she was pursued by the PSB, the claimant proffered a summons, and a detention certificate. The panel notes that the summons and the detention certificates are single-page documents with black print and a red-ink stamps as the only, rather rudimentary security feature, and thus easily fabricated. In light of the credibility concerns in this decision with respect to her allegations and taking into consideration documentary evidence that indicates the widespread availability of fraudulent documents in China, the panel places no evidentiary weight on the summons or detention certificate in establishing the claimant's allegations that she is wanted by the PSB.

[20] The Applicant asserts the RPD only questioned the Applicant in a limited manner on this document and the credibility of the summons was not raised by the RPD. This she argues is contrary to the RAD finding at paragraph 24:

In addition to the RPD's concerns, I note that the summons is irregular on its face. Specifically, the Appellant's summons lacks a line near the very bottom of the document where the recipient is requested to sign. According to the NDP, the summons has not varied in format since 2003 and that "...such forms are supposed to be used throughout the country and that 'regional variations are not meant to exist.'" The Federal Court has recognized that the RAD is permitted to make additional findings on a known issue without inviting additional submissions or holding a hearing. I find that the lack of a signature line in the Appellant's summons is significant. Specifically, the requirement for the named accused to sign the summons is, effectively, a security detail, as it is verification that the accused received it. I therefore find that the Appellant has submitted another fraudulent document, and I reiterate my finding that the Appellant is not credible. I confirm the RPD's conclusion that the Appellant is not being sought by the PSB.

[21] The Applicant argues that the RAD made a new credibility finding on the summons.

However, the decision of the RPD demonstrates that the reliability of the summons was clearly an issue for the RPD. The RPD noted the "rudimentary" security issues with the summons. The RAD essentially agreed with and endorsed the RPD's findings on this issue.

[22] The summons was a document tendered by the Applicant and she was aware that the RPD had reliability concerns with the document. The Applicant was put on notice that the RPD had issues with the genuineness of the document. Accordingly, the findings of the RAD on this document do not constitute a new issue for which the RAD was required to give the Applicant an opportunity to address.

### **Falun Gong Notebook**

[23] On this issue, the RPD found as follows at paragraph 43:

While the claimant provided two support letters from fellow co-practitioners in Canada and her own thoughts on Falun Gong in the form of diary-like notes, the panel finds this is insufficient to overcome the credibility concerns noted in this decision. As the Court explains in *Jiang*, the panel can "import its credibility findings into its assessment of an application's *sur place* claim." The panel can, "assess an applicant's genuineness and therefore its *sur place* claim light of credibility concerns relating to the original authenticity of a claim." Since the panel has made negative credibility findings - it can therefore import these findings onto the assessment of the claimant's *sur place* claim. The panel finds the support letters from two fellow practitioners in Canada are insufficient to overcome the numerous credibility findings in this decision and the panel notes the authors were not present at the hearing to be cross-examined. Additionally, there is insufficient credible evidence for a conclusion that the claimant's name and identity have or will come to the attention of Chinese authorities due to her alleged practice in Canada.

[24] The Applicant relies upon this passage to argue that the credibility of the notebook was not in issue for the RPD.

[25] The RAD at paragraph 34 concluded as follows:

I have also reviewed the Appellant's notebook. However, I do not find it to be probative. First, I note that the notebook generally talks about how Dafa allegedly makes her feel and its results. That is, the notebook is limited with respect to describing when, whether or how the Appellant is actually applying Falun Gong or its concepts. Secondly, the entries are not dated, and some of the entries are not written contemporaneously with the events described in it. For example, on the first page, the Appellant talks about her late pregnancy or the birth of her twins in the past tense. I find that this undermines that the notebook is a genuinely-kept contemporaneous chronicle of her experience with Falun Gong. Finally, the Appellant testified that she had been keeping this journal since 2017 and wrote in it one to three times weekly. However, when the Appellant was then asked to produce the notebook at the hearing, it was noted that, in addition to the eight pages previously produced, there were only three to four additional pages. Overall, in light of these findings and earlier credibility concerns, I find that the notebook does not establish that the



Appellant is a genuine or sincere practitioner of Falun Gong and, on a balance of probabilities, was created by the Appellant for the purposes of bolstering her claim for refugee protection.

[26] The notebook was the Applicant's own document and she made submissions to the RAD about the contents of the notebook. In my view, this does not qualify as a new issue.

### **Support Letters**

[27] The Applicant relied upon two letters from fellow Falun Gong practitioners that attest to her commitment to the faith. The Applicant argues that the RAD erred when it summarily dismissed both letters by relying on one letter. The Applicant also argues she should have been given a chance to respond to the new credibility findings made by the RAD with respect to these letters, given that the RPD did not examine the letters in detail, but merely dismissed them because of previous issues with the Applicant's credibility.

[28] On this issue, at paragraph 37, the RAD found as follows:

Regarding the corroborative letters and the notebook, there is no evidence that the letters from the co-practitioners or the notebook would place the Appellant at risk if she returns to China. Furthermore, I have already reviewed the notebook and find it to be not probative. I have also reviewed the letters from co-practitioners Huantie Xie and Shujie Tao. The letter from Mr. Xie is brief and states that he has been practising Falun Gong for six years, since 2008. However, the letter is dated 2016, which would be eight years since 2008. I find the fact that the writer has not even provided a consistent length of time for which he has allegedly practised Falun Gong, in addition to the credibility concerns with the Appellant herself, undermines the genuineness of the contents of this letter. There is also no evidence to indicate that the authorities in China are aware of the Appellant's alleged activities in Canada. Finally, it is permissible for the RPD and the

RAD to import its credibility findings into the *sur place* claim. Here, the Appellant was found to be not credible with respect to the genuineness of her Falun Gong practise, which is applicable to her *sur place* claim.

[29] These support letters were an issue addressed by the RPD and therefore the Applicant was on notice that these would be considered by the RAD on appeal. Although the RAD may have found new elements with the reliability of these documents, that does not qualify as a new issue (*Mohamed v Canada (Immigration, Refugees and Citizenship)*, 2020 FC 657 at paras 49 to 52).

[30] The reliability of the Applicant's evidence was in issue before the RPD and ultimately for the RAD as well. The fact that the RAD's reliability findings went further than the RPD's does not alone constitute a "new issue" thereby entitling the Applicant an opportunity to provide additional submissions.

2. *Did the RAD Err in Assessing the Genuineness of the Applicant's Falun Gong Practice?*

[31] According to the Applicant, the RAD set an unreasonably high standard in assessing her knowledge. She also argues that the RAD unreasonably focused on whether her answers were correct rather than assessing those answers against her genuineness of belief and practice.

[32] The Applicant argues that the genuineness of her practice is at the core of her claim for protection. She argues that the RAD was unreasonable and mischaracterized her practice and knowledge.

[33] The RAD noted that Falun Gong is a very knowledge-based practice, that the Applicant stated she had been practicing Falun Gong for three years, reads the Zhuan Falun, and "has read every chapter at least once". Against this professed knowledge, the RAD noted that the Applicant's answers to basic questions were either vague or incorrect. For example, the Applicant did not know that the Law Wheel turns both clockwise and counter clockwise. The RAD held that given the Applicant's statement that her favourite exercise was an exercise which specifically refers to the fact that the Law Wheel turns counter clockwise, and the fact that the Law Wheel is fundamental in Falun Gong, the Applicant's practice was not genuine. The RAD also considered that the Applicant's answers describing the purpose of different exercises were different from their stated purposes. Finally, as discussed above, the RAD considered the Applicant's notebook and found that it was non-probative given the lack of detail in describing the Applicant's practise of Falun Gong, and the aforementioned credibility concerns.

[34] In my view, the RAD reasonably considered the Applicant's evidence against the claimed knowledge of the practice. The Applicant is asking this Court to reweigh the evidence, which is not the role of a reviewing court (*Vavilov* at para 125).

**JUDGMENT IN IMM-4199-20**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. Both parties agree there is no certified question.

"Ann Marie McDonald"

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Judge

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

**DOCKET:** IMM-4199-20

**STYLE OF CAUSE:** LIZHU HE v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD VIA VIDEOCONFERENCE

**DATE OF HEARING:** AUGUST 18, 2021

**JUDGMENT AND REASONS:** MCDONALD J.

**DATED:** SEPTEMBER 29, 2021

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