

Federal Court



Cour fédérale

Date: 20211201

Docket: IMM-4031-20

Citation: 2021 FC 1332

Ottawa, Ontario, December 1, 2021

PRESENT: Madam Justice Pallotta

BETWEEN:

DEHONG CHEN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Dehong Chen, seeks judicial review of a decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada, under section 72 of the *Immigration and Refugee Protection Act*, SO 1991, c 27 [IRPA].

[2] Mr. Chen is a citizen of China who alleges a fear of persecution as a Falun Gong practitioner. Following a raid of his Falun Gong practice group, Mr. Chen went into hiding to evade the Public Security Bureau (PSB) who were searching for him. He learned from his father that a co-practitioner had been arrested. With the assistance of a smuggler, Mr. Chen fled to Canada and made a claim for refugee protection.

[3] The Refugee Protection Division (RPD) rejected Mr. Chen's claim, finding that he lacked credibility and that he failed to establish a *sur place* claim that his activities in Canada would put him at risk upon return to China. The RPD concluded that Mr. Chen is not a genuine Falun Gong practitioner and he was not pursued by the PSB.

[4] The RAD dismissed Mr. Chen's appeal. Although the RAD disagreed with certain findings made by the RPD, the RAD confirmed the RPD's determination that Mr. Chen is neither a Convention refugee nor a person in need of protection under sections 96 or 97 of the *IRPA*. The determinative issue was credibility.

[5] Mr. Chen submits that the RAD's decision is unreasonable in that it relied on matters that were peripheral to his claim for protection—namely, that he had destroyed his passport and lied about his travel route to Canada—as the basis for an overall negative credibility determination. Furthermore, he submits that the RAD's negative credibility determination tainted the RAD's assessment of his *sur place* claim, rendering it unreasonable.

[6] For reasons detailed below, Mr. Chen has not established that the RAD's decision is unreasonable. Accordingly, this application for judicial review is dismissed.

II. Issue and Standard of Review

[7] The sole issue on this application for judicial review is whether the RAD's decision is reasonable.

[8] Reasonableness review is conducted according to the guidance that is set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. In applying the reasonableness standard, the Court must ask whether the decision bears the hallmarks of reasonableness—justification, transparency, and intelligibility (*Vavilov* at para 99). A reasonable decision is based on an internally coherent and rational chain of analysis, and it is justified in relation to the facts and law that constrain the decision maker (*Vavilov* at para 85). The Court must refrain from reweighing and reassessing the evidence that was before the decision maker (*Vavilov* at para 125).

III. Analysis

[9] Mr. Chen submits that the RAD assessed his credibility in a microscopic manner, focusing on issues that were peripheral to his claim for protection. He argues that travelling on false documents, destroying travel documents or lying about them upon arrival to Canada are of limited value in determining an applicant's general credibility, and it is an error to base a negative credibility finding solely on matters pertaining to travel from the country of

persecution: *Rasheed v Canada (Minister of Citizenship and Immigration)*, 2004 FC 587 at para 18 [*Rasheed*]; *Attakora v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 444, 1989 CarswellNat 736 at 2 (FCA) [*Attakora*]; *Ahangaran v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 72 at para 5, 168 FTR 315 (FCTD) [*Ahangaran*]. Mr. Chen submits that destroying his passport and lying about his travel route to Canada have little bearing on the central issue of whether he is a genuine Falun Gong practitioner who would face a risk of persecution if returned to China. It was a reviewable error for the RAD to rely on these points to impugn his overall credibility.

[10] Furthermore, even if he lied about his journey to Canada, Mr. Chen submits the RAD was required to determine whether he had become a genuine Falun Gong practitioner in Canada, and failed to do so. Mr. Chen points to the RAD's findings that he "clearly has a basic knowledge" of Falun Gong, and that the RPD had erred by making a negative credibility finding based on a lack of knowledge. He argues the RAD effectively found that his knowledge of Falun Gong was sufficient to demonstrate the genuineness of his practice, were it not for the flawed credibility findings that tainted the RAD's assessment of his *sur place* claim, leading the RAD to conclude that his knowledge was the result of preparing for the refugee claim.

[11] The respondent states that each case turns on its facts, and there is no general rule that matters pertaining to travel documents and routes cannot be considered in assessing credibility. The respondent points to a number of Federal Court decisions where such credibility assessments were upheld as reasonable: *Toora v Canada (Minister of Citizenship and Immigration)*, 2006 FC 828 at para 45; *Singh v Canada (Minister of Citizenship and Immigration)*, 2008 FC 453 at paras

15-16; *Olaya Yauce v Canada (Minister of Citizenship and Immigration)*, 2018 FC 784 at para 18; *Li v Canada (Minister of Citizenship and Immigration)*, 2018 FC 877 at para 22 [*Li*]; *Wang v Canada (Minister of Citizenship and Immigration)*, 2019 FC 216 at para 23 [*Wang*]. The respondent submits that the RAD reasonably assessed Mr. Chen's credibility in this case.

[12] I agree with the respondent. The RAD considered the full factual context in assessing credibility—the assessment was not microscopic. Mr. Chen's efforts to escape the alleged persecution in China were part of his narrative, which he relied on to support his claim. He claimed that he destroyed his passport, used a fraudulent travel itinerary, and lied to Canadian border officials about how he entered Canada because his smuggler warned him that he would be sent back to China if he did not follow those instructions. These were not peripheral issues.

[13] The RAD noted that, apart from his own testimony, there was no evidence about the existence of his passport, an allegedly forged Canadian visa in that passport, or the smuggler. The RAD considered Mr. Chen's testimony that he did not have a photocopy of his passport and could not recall when it was issued. Also, Mr. Chen had lied repeatedly to Canadian border officials, despite their warnings that lying could negatively affect his credibility before the Immigration and Refugee Board, and even after he was confronted with evidence that contradicted his statements and offered an opportunity to tell the truth. The RAD stated, "[l]ater, when he prepared his Basis of Claim (BOC) narrative, with the assistance of counsel, he changed his evidence to acknowledge what the customs officials already knew".

[14] The RAD considered Mr. Chen's explanation for destroying his passport and lying to Canadian border officials, and did not accept it. The RAD found that Mr. Chen deceived Canadian officials without understanding why he had been told to do so by the smuggler or how this would help him, noting as well that there was no evidence that the smuggler exists apart from his own testimony. The RAD reasonably found that Mr. Chen's dishonesty with Canadian border officials, without reasonable explanation, undermined his credibility.

[15] With respect to the *sur place* claim, I note that Mr. Chen's submissions to the RAD do not raise any specific error in the RPD's *sur place* analysis. Rather, he had argued that the RPD erred in assessing his identity as a genuine Falun Gong practitioner—that there is a “low bar” for claimants to demonstrate religious knowledge, and the RPD improperly discounted Mr. Chen's demonstrated knowledge based on a failure to correctly answer a question relating to the concept of attachments.

[16] The RAD acknowledged and fully addressed Mr. Chen's argument, finding that while his knowledge “is less detailed than it might be”, he has basic knowledge. As noted above, the RAD found the RPD had erred by making a negative credibility finding based on the lack of knowledge, and stated that it would consider Mr. Chen's knowledge in his favour in the context of the overall assessment of his credibility.

[17] The RAD did so, weighing the negative credibility findings and lack of supporting evidence (including the lack of evidence to demonstrate the means by which he travelled to Canada) against Mr. Chen's knowledge of Falun Gong practices. The RAD concluded that Mr.

Chen is not a genuine Falun Gong practitioner, he is not being pursued by the PSB, and on a balance of probabilities, his ability to discuss Falun Gong is a result of having prepared for the purposes of the refugee claim. Furthermore, the RAD found that any Falun Gong activities Mr. Chen has undertaken in Canada were for the purposes of his refugee claim, and there was no evidence that the government of China is aware of such activities.

[18] Mr. Chen's argument that the RAD failed to assess whether he had become a genuine Falun Gong practitioner in Canada, for the purposes of a *sur place* claim, must fail. The RAD's assessment was an overall credibility finding that applied to all aspects of Mr. Chen's claim, including his *sur place* claim. The RAD is permitted to assess an applicant's *sur place* claim in light of credibility concerns relating to the original claim: *Li* at para 29, citing *Zhou v Canada (Minister of Citizenship and Immigration)*, 2015 FC 5 at para 23. The RAD is also permitted to confirm the RPD's determination on another basis: *Canada (Minister of Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 78.

[19] Furthermore, Mr. Chen did not raise a specific issue about the *sur place* aspect of his claim on appeal to the RAD, apart from the issue of whether his knowledge was sufficient to demonstrate that he is a genuine Falun Gong practitioner. The RAD fully considered and addressed this argument. The RAD was not required to conduct any additional analysis as no other issue was raised: *Dahal v Canada (Minister of Citizenship and Immigration)*, 2017 FC 1102 at paras 26, 30-39; *Canada (Minister of Citizenship and Immigration) v K(R)*, 2016 FCA 272 at para 6.

[20] In summary, the RAD considered multiple factors in the overall assessment of Mr. Chen's credibility, and reasonably rejected his refugee claim on that basis. The circumstances of this case are similar to those considered in *Wang* and *Li*, and distinguishable from those in *Rasheed*, *Attakora*, and *Ahangaran*. The RAD's findings were open to it based on the record, and properly justified by the reasons. The RAD's assessment and analysis were transparent and intelligible.

IV. Conclusion

[21] Mr. Chen has not established that the RAD's decision is unreasonable. This application for judicial review is dismissed.

[22] Neither party proposes a question of general importance for certification. In my view, no such question arises in this case.

JUDGMENT in IMM-4031-20

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question for certification.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4031-20

STYLE OF CAUSE: DEHONG CHEN v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEO CONFERENCE

DATE OF HEARING: SEPTEMBER 22, 2021

JUDGMENT AND REASONS: PALLOTTA J.

DATED: DECEMBER 1, 2021

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