

Federal Court



Cour fédérale

Date: 20220321

Docket: IMM-2476-21

Citation: 2022 FC 380

Ottawa, Ontario, March 21, 2022

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

GUOMIN GUO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is the judicial review of a negative claim pursuant to sections 96-97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27, as affirmed by the Refugee Appeal Division [RAD]. The Applicant challenges the fairness of the interpretation of the facts and credibility; the nature of the findings; the negative inferences drawn from the failure to put in

corroborative evidence; the presumption of truth regarding hearing evidence; and the lack of clarity of a negative *sur place* claim.

II. Background

[2] The Applicant, a 35 year old Chinese citizen, claimed persecution by the Chinese Public Security Bureau [PSB] because of his involvement with a Christian underground church. He claimed that the Chinese government started paying attention to religious activities around March 2018.

[3] The Applicant's church organizer warned against further meetings. Shortly thereafter, the Applicant heard that a pastor in Tibet had been arrested. The Applicant's concern was that he had been involved with overseas pastors. The Applicant went into hiding and then left China with the aid of a snakehead.

[4] The Applicant further claimed that after he left China, the PSB came to his home because of his church involvement and association with overseas pastors. He later learned that a friend had been arrested, after which the Applicant filed for refugee protection. His friend was ultimately imprisoned for three years.

[5] The Refugee Protection Division [RPD] dismissed the refugee claim on the basis of credibility. It found that the Applicant had not established that he was a practicing Christian while in Canada and therefore was unlikely to practice as such if returned to China. It also found

that the Applicant was not a practising Christian in China and therefore was not of interest to the PSB.

[6] The RPD drew negative credibility findings from several aspects of the narrative including a vague response to a question about the knowledge required for Christian baptisms, and vague recollections of when the Applicant first received Holy Communion and who was present during his baptism. The Applicant put in no corroborating evidence of his religious activities or of the PSB's interest in him.

[7] The Applicant had similar credibility issues with respect to his religious activities in Canada. The RPD found him not credible in respect of knowledge and the manner in which he answered questions. His lack of a reasonable explanation for not producing corroborative evidence undermined his claim of serious possibility of persecution.

[8] The RAD confirmed the RPD's decision. It found that even the Applicant's written description of the facts was misrepresentation and therefore supportive of the RPD's conclusion that the Applicant was not at risk from the PSB. The RAD did question the "weak" credibility finding based on the Applicant's non-attendance at church after his church suspended meetings.

[9] The RAD conducted an independent assessment of the Applicant's testimony and confirmed the RPD's negative credibility conclusions. It also, as part of the independent assessment, drew a negative credibility conclusion from the absence of corroborative evidence.

[10] The Applicant's excuses, including that the RPD would not accept evidence from family members, or that he could not locate any of the other nine members of his church because they had all turned off their cell phones, were unreasonable explanations for not providing corroborative evidence.

[11] The RAD found that there was insufficient evidence of the PSB's interest in the Applicant, and that the RPD was correct in finding the Applicant not to be a genuine Christian and that the Applicant had no valid *sur place* claim.

III. Analysis

[12] There is no issue that the standard of review is reasonableness in accordance with *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

[13] The Court must afford considerable regard to the RPD's and RAD's credibility findings. This is particularly the case with the RPD's findings which were, in part, based on the observation of the manner in which the Applicant responded to questions. In that regard, the RPD enjoyed an advantage on its credibility findings analysis comparable to that of a trial judge who sees and hears a witness.

[14] The RAD's conclusions are reasonable. This was a weakly supported claim almost entirely reliant on the Applicant's dubious testimony. There were no substantive documents, no evidence of PSB involvement or experience with the PSB.

[15] The RAD was fully engaged in the review of the RPD reasons. It found part of the RPD decision problematic in respect of a “not strong/weak” finding but that matter was determinative and was well explained and the conclusion justified.

[16] Given the credibility concerns arising from the Applicant’s own testimony, it was entirely reasonable for the RPD to be concerned about the absence of corroborative evidence and the absence of a reasonable explanation for its absence.

[17] The presumption of truthfulness is of little assistance to the Applicant. As explained in *Gao v Canada (Citizenship and Immigration)*, 2021 FC 271 at paras 21-22, the presumption of truth of an applicant’s testimony is not absolute. It is accepted unless there are grounds to the contrary, including a general negative credibility finding. In this case, both the RPD and RAD identified multiple grounds to question the Applicant’s evidence.

[18] The presumption is of even less weight in respect of hearsay. The law recognizes the inherent unreliability of hearsay evidence – there is no presumption of truth. Hearsay can be accepted but only as grounds of reliability and necessity – the burden to establish those conditions rests on the party introducing the evidence. In the present case, the Applicant had no direct, personal knowledge about the PSB’s activities and interests.

[19] With respect to the RAD’s conclusion on the “*sur place*” claim, its conclusions are fully explained and revolve around lack of credibility, lack of corroboration, absence of genuine

Christian belief and the absence of PSB interest. The necessary findings are well set out in paragraphs 30-31 of the RAD's decision.

IV. Conclusion

[20] For all these reasons, I find the RAD decision to be reasonable. The judicial review will be dismissed. There is no question for certification.

JUDGMENT in IMM-2476-21

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question for certification.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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