

Federal Court



Cour fédérale

Date: 20220406

Docket: IMM-3958-21

Citation: 2022 FC 482

St. John's, Newfoundland and Labrador, April 6, 2022

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

YONGXIA WENG

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Ms. Yongxia Weng (the “Applicant”) seeks judicial review of the decision of the Immigration and Refugee Board, Refugee Appeal Division (the “RAD”), dismissing her appeal from a decision of the Immigration and Refugee Board, Refugee Protection Division (the “RPD”). The RPD determined that the Applicant was neither a Convention refugee nor a person in need of protection, pursuant to section 96 and subsection 97(1), respectively, of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicant is a citizen of China. She sought protection in Canada on the basis of fear of persecution due to her religious beliefs, that is as a member of the Christian Shouter Church. She provided details of her fears in her Basis of Claim (the “BOC”).

[3] The RPD dismissed her claim on credibility grounds. The RAD found that credibility was the determinative issue. In particular, the RAD found that the failure of the Applicant to update her BOC to say that the Public Security Bureau (the “PSB”) went to her mother’s home after her flight from China and after she had filed her BOC undermined her credibility.

[4] The Applicant pleads that the RAD’s findings on credibility are unreasonable, because there is no requirement that a refugee claimant must amend a BOC to refer to incidents subsequent to making a claim for protection.

[5] The Minister of Citizenship and Immigration (the “Respondent”) submits that the RAD reasonably took this failure into account, in assessing the credibility of the Applicant’s evidence.

[6] The decision is reviewable on the standard of reasonableness, pursuant to the decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov* (2019), 441 D.L.R. (4th) 1 (S.C.C.).

[7] In considering reasonableness, the Court is to ask if the decision under review “bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is

justified in relation to the relevant factual and legal constraints that bear on that decision”; see *Vavilov, supra* at paragraph 99.

[8] In the circumstances of this decision, I agree with the submissions of the Applicant that the decision in *Zhang v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 665 is relevant. In that decision, the Court said the following at paragraphs 7 and 8:

The Board also drew an adverse inference from Ms. Zhang’s failure to amend her PIF to mention recent visits to her parents’ home by security officers. These visits took place after she had filed her PIF.

Again, the basis for the Board’s concern is difficult to appreciate. The applicant understandably felt that she could testify about recent events at her hearing without having to amend her written documents.

[9] In the result, the application for judicial review will be allowed, the decision of the RAD will be set aside and the matter remitted to a differently constituted panel of the RAD for redetermination. There is no question for certification proposed.

JUDGMENT in IMM-3958-21

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision of the Refugee Appeal Division is set aside and the matter remitted to a different panel of the Refugee Appeal Division for redetermination. There is no question for certification proposed.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3958-21

STYLE OF CAUSE: YONGXIA WENG v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE
BETWEEN TORONTO, ONTARIO AND ST. JOHN'S,
NEWFOUNDLAND AND LABRADOR

DATE OF HEARING: MARCH 16, 2022

REASONS AND JUDGMENT: HENEGHAN J.

DATED: APRIL 6, 2022

APPEARANCES:

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