

Federal Court



Cour fédérale

Date: 20220506

Docket: IMM-54-21

Citation: 2022 FC 671

Ottawa, Ontario, May 6, 2022

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

TIANWU CHEN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Chen, applied for refugee protection based on his fear of persecution in China because of his Christian religious beliefs. His claim was dismissed by the Refugee Protection Division [RPD]. Mr. Chen appealed this dismissal and the Refugee Appeal Division [RAD] upheld the RPD's refusal on the basis that it did not find Mr. Chen's claim to be credible. Mr. Chen is challenging the RAD's dismissal in this judicial review.

[2] Mr. Chen argues that the RAD's determination that his claim lacked credibility is based upon unreasonable assessments of his corroborative documents, the discrepancies between his testimony and statements made at the port of entry, and his religious knowledge. Mr. Chen also argues that the RAD erred in its evaluation of his *sur place* claim.

[3] I do not find that there is a basis to interfere with the RAD's determination on credibility, which is the determinative issue in this claim. The RAD's credibility findings are set out clearly and are considered cumulatively. The RAD's analysis is transparent, intelligible and justified.

[4] Based on the reasons set out below, I dismiss the application for judicial review.

II. Background Facts

[5] Mr. Chen is a citizen of China. His claim for refugee protection is based on his practice of Christian faith. Mr. Chen alleges that while he was at a gathering with his church study group, he was arrested and then later accused of illegally gathering and misleading people to join the church. Mr. Chen sets out in his claim for protection that he was interrogated, beaten and held in detention for seven days.

[6] Soon after his release, Mr. Chen was advised that the police had come looking for him at his place of business. Mr. Chen went into hiding and very soon after, fled the country.

[7] Mr. Chen arrived in Canada on May 12, 2019 and made a claim for refugee protection.

[8] The RPD rejected his claim on February 4, 2020 on the basis that he was not credible. The RAD upheld this rejection in a decision dated December 7, 2020.

III. Issues and Standard of Review

[9] The only issue raised on this judicial review relates to the RAD's assessment of the credibility of Mr. Chen's claim for protection. Both parties agree that the reasonableness standard applies. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption.

IV. Analysis

[10] The RAD described the three determinative issues on appeal as: credibility, whether or not the Appellant is a genuine Christian practitioner, and whether the Appellant had established a *sur place* claim. In my view, the RAD's findings about whether Mr. Chen is a genuine Christian practitioner and whether he has made out a *sur place* claim are really credibility determinations. The determinative issue in this claim was credibility.

[11] Mr. Chen has raised arguments about three aspects of the RAD's credibility determination: the evaluation of the corroborative documents, the reliance on discrepancies between his testimony and the port of entry notes, and his religious knowledge. I note that it is clear from the RAD's reasons that it did not base its overall credibility determination on one

issue but rather considered all of these concerns together. Mr. Chen has not identified sufficiently serious shortcomings in the RAD's evaluation. It was a transparent, intelligible and justified conclusion in light of the record.

[12] In my view, the key credibility determination made by the RPD and RAD was the evaluation of Mr. Chen's testimony at the RPD hearing in relation to his Christian faith. Mr. Chen has pointed to a number of cases of this Court that caution decision-makers in evaluating the degree of a person's religious knowledge (see for example *Ren v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1402 at paras 17-19 and *Zhang v Canada (Minister of Citizenship and Immigration)*, 2012 FC 503 at paras 10-13). This point was also made to the RAD by Mr. Chen.

[13] The RAD agreed that the jurisprudence is clear that an evaluation of the credibility of a religious claim cannot be "reduced down to a trivia test." The RAD, however, disagreed with how Mr. Chen characterized the RPD's evaluation of his testimony, describing it as "inaccurate and misleading." The RAD found that the RPD's determination rested on Mr. Chen's vague answers to multiple open-ended questions about the nature of his faith and its importance in his life. It was not based on Mr. Chen's inability to answer facts about his religion. I do not see a basis to interfere with the RAD's finding on this issue.

[14] Further, I do not find the RAD's analysis of the Notice of Detention provided by Mr. Chen unreasonable, given the number of discrepancies, without explanation, between it and the samples and information about detention notices across China, set out in the Response to

Information Request (“RIR”) included in evidence with the National Documentation Package on China.

[15] The RAD noted that the RIR explained that the “format of notices of detention and of arrest [are] ‘basically’ the same across China, and the information that remains the same in the notices issued by different police stations across China is the address, the official seal of the PSB, the time of arrest or detention and the ‘type of crime.’” The RAD then noted multiple discrepancies between Mr. Chen’s Notice of Detention and the samples included in the RIR, including that Mr. Chen’s notice did not include the time of arrest or detention, nor did it include the “type of crime.” The RAD also noted other minor discrepancies about formatting of the document.

[16] The last argument raised by Mr. Chen is the RAD’s evaluation of the discrepancies between his statements at the port of entry, his statements in his Basis of Claim (“BOC”) form and his testimony. In particular, the RPD and the RAD took issue with Mr. Chen’s statement at the port of entry that there were 17 to 18 people at the house when he was arrested, whereas he stated in his BOC that there were between 5 to 8 people at the house. The RAD noted that no negative inference was being drawn from the discrepancy between the time of day of the incident, noting that at the port of entry Mr. Chen had stated that the arrest happened in the morning and in his BOC, he described it as happening in the evening. Nor was a negative inference drawn from Mr. Chen stating his religion was Roman Catholicism.

[17] The RAD correctly noted that decision-makers must exercise caution in relying on discrepancies between statements made at the port of entry and later statements (*Chikadze v Canada (Minister of Citizenship and Immigration)*, 2020 FC 306 at para 21; *Guyen v Canada (Minister of Citizenship and Immigration)*, 2018 FC 38 at paras 39-42). The RAD determined that the discrepancy as to the number of people in the home when Mr. Chen was arrested was a significant discrepancy that was not adequately explained by Mr. Chen. Further, the RAD noted that “this was far from the only credibility problem with the Appellant’s claim.” I read this statement as indicating that the discrepancy, on its own, may not have been sufficient for the RAD to have found Mr. Chen’s claim to be not credible, but that the discrepancy was relevant, taking into account the other credibility problems cumulatively. I do not see a basis to interfere with this determination.

[18] On the issue of a *sur place* claim, the RAD considered that given it had found that on a balance of probabilities that Mr. Chen was not a practicing Christian, in Canada or in China, there was no basis for a *sur place* claim. This was a reasonable finding in light of the evidence.

[19] Based on the above reasons, the application for judicial review is dismissed.

JUDGMENT IN IMM-54-21

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-54-21

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

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: OCTOBER 20, 2021

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: MAY 6, 2022

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