

Federal Court



Cour fédérale

Date: 20220509

Docket: IMM-5964-21

Citation: 2022 FC 682

Toronto, Ontario, May 9, 2022

PRESENT: Mr. Justice Diner

BETWEEN:

XING LIN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

**(Delivered orally from the Bench by videoconference
at Toronto, Ontario on May 9, 2022)**

[1] This is an application for judicial review of a Refugee Appeal Division [RAD] decision regarding the Applicant, a Chinese citizen, who states that he fears persecution on the basis of his religious practice, and Chinese family planning law. The RPD refused the Applicant's claim as he did not credibly establish his identity. The RAD agreed. I do not find any reviewable errors in the RAD decision.

[2] The Applicant alleged before the RPD that he practised Catholicism in an underground church in China that was raided by the Public Security Bureau, which he now fears. The Applicant also alleges that his parents suffered because they violated the family planning policy by having six children, having had their home demolished, and being fined. He currently has two children, but wishes to have six like his parents, who are also Catholics and do not believe in birth control.

[3] The RAD refused the Applicant's appeal because it largely agreed with the RPD regarding negative credibility findings relating to his identity documentation. While the RAD disagreed with the RPD on implausibility findings concerning the Applicant's Chinese passport, it found other documents to be problematic, including his Resident Identity Card [RIC] and children's birth certificates.

[4] The Applicant now challenges findings with respect to the RIC, along with the procedural fairness of the RAD considering credibility issues raised regarding the birth certificates. The standard of review with respect to the first issue is reasonableness (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*]). Procedural fairness, the second issue, requires that "a fair and just process was followed having regard to all the circumstances" (*Osman v. Public Service Alliance of Canada*, 2021 FCA 227 at para 7).

[5] As for the RIC, the RAD confirmed the RPD's negative credibility finding, given inconsistencies between the RIC and country condition evidence. Specifically, the Applicant testified at the RPD that he lost his RIC in 2019, applied to renew it, paid approximately 200

RMB to do so, and received the new document in the mail. However, the country condition evidence indicated that the fee to replace a lost RIC is 40 RMB, and the replacement RIC must be picked up by applicants in person, rather than receiving them in the mail.

[6] The Applicant argues that it was “pure speculation” for the RAD to assume that the process for obtaining a RIC was that as set out in the 2011 country condition evidence (namely, an IRB Response to Information Request [RIR]). However, I note that the RIR was included in the 2020 NDP, which was current at the time of the RPD hearing. Without evidence to suggest the contrary, I find that the RAD acted reasonably in relying on the RIR, as has been confirmed by this Court recently (see, for instance Strickland J’s decision in *Ye v. Minister of Citizenship and Immigration*, 2021 FC 1025 at para 54, confirming Justice Fothergill’s conclusions in *Lin v. Minister of Citizenship and Immigration*, 2019 FC 450), where he wrote at paragraph 26 that “while the RIR was unchanged, its inclusion in the 2017 NDP was a strong indication that it remained current, and it was therefore reasonable for the RAD to rely on”.

[7] As for the second issue, the Applicant argues that the RAD breached the principles of procedural fairness when it failed to put its concerns regarding the birth certificates to the Applicant, relying primarily on *Gondi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 433, where Justice Layden-Stephenson at paragraphs 14-15 had found that there was a report in the NDP, which the RPD used to fault the applicants, without advising them about the report, or giving them a chance to respond.

[8] I do not find this argument has any merit. First of all, there were errors on the face of the birth certificate (regarding its numbering not corresponding with the year of birth of the child). First, I note that this finding of the RAD is supported by country condition documentation, which the Applicant did not address in his written submissions to the Court. Rather the Applicant only attacks procedural fairness.

[9] In that regard, the Applicant stated to the RAD that the RPD failed to address other identity documents, which he says was an error in the RPD decision. That is exactly what the RAD then went on to do in assessing the birth certificates. I note that the jurisprudence is clear: the RAD may make further and independent credibility findings when credibility has been raised by the RPD and then the applicant in its arguments to the RAD.

[10] For instance, in *Gedara v. Canada (Citizenship and Immigration)*, 2021 FC 1023 at paragraphs 37-39, Justice Brown cited other decisions with approval including *Nuriddinova v Canada (Citizenship and Immigration)*, 2019 FC 1093, where Justice Walker had stated at para 47:

While the RAD cannot raise a new issue without notice to the parties, it is entitled to make independent findings of credibility against an appellant where credibility was at issue before the RPD, the RPD's findings are contested on appeal and the RAD's additional findings arise from the evidentiary record.

[11] Finally, I note that there were several other negative credibility conclusions made by the RAD, which the Applicant did not challenge. When put to counsel that the Applicant had a tainted record of past immigration misrepresentation and use of fraudulent documents, counsel responded that while not minimizing what the Applicant had done in the past, the Applicant had

relied on assistance with visa applications previously, and that the RAD has an important function to assess the Applicant for what he is saying now under Oath in the refugee process, and his credibility should not be tainted by what he had done in the past. He is now in a different circumstance, in which he is claiming a fear of persecution, has sworn to tell the truth, and thus should not be caught by an assumption of “once a liar, always a liar”.

[12] Leaving aside the past issues, I note that both the RAD and the RPD had various findings on which it had new and reasonable credibility concerns. The past credibility and misrepresentation issues, while peripherally raised by the RAD, did not form any central finding in its decision.

JUDGMENT in file IMM-5964-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No questions for certification were proposed and I agree that none arise.
3. No costs will be issued.

"Alan S. Diner"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5964-21

STYLE OF CAUSE: XING LIN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

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JUDGMENT AND REASONS: DINER J.

DATED: MAY 9, 2022

APPEARANCES:

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