Federal Court  Cour fédérale

Date: 20220512

Docket: IMM-4459-21

Citation: 2022 FC 710

Ottawa, Ontario, May 12, 2022

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

XIAOJING SUN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of a decision by the Refugee Appeal Division [RAD], dated June 14, 2021. The RAD confirmed the decision of the Refugee Protection Division [RPD] which determined the Applicant is neither a Convention refugee nor a person in need of protection pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [*IRPA*] [Decision].

II. Facts

[2] The Applicant is a 33-year-old citizen of China. She fears persecution as a Christian and as a member of a Christian underground church in China.

[3] The Applicant was in a common law relationship and had a son in 2012. However, due to marital difficulties, the Applicant and her partner separated in late 2015 and she lost custody of her son. She became depressed.

[4] In August 2018, a friend introduced the Applicant to Christianity and in October 2018, she started to attend this friend's underground house church. In December 2018, while she was distributing religious leaflets, unknown people approached her and she managed to run away. Shortly afterwards, Public Security Bureau [PSB] officers came looking for her at her home but did not find her. However, they returned the following day and beat her. Her father intervened, which allowed her to escape. She went into hiding until she left China with the help of a smuggler.

[5] The Applicant says after she left China, she learned from her father that a police officer told him she must report to the police.

[6] The Applicant came to Canada in March 2019. In Canada, the Applicant joined a Christian church and was later baptized into the Christian faith. She made a claim for refugee

protection in April 2019. The RPD found there was insufficient credible evidence to find the Applicant is a Christian.

III. Decision under review

[7] The RAD dismissed the appeal on June 14, 2021 and upheld the RPD's finding that the Applicant is neither a Convention refugee nor a person in need of protection. The RAD states it conducted an independent assessment of the evidence and arguments.

[8] The RAD noted the RPD made several credibility findings.

[9] After considering the totality of the evidence, the RAD found there is insufficient evidence to demonstrate sincerity of belief and found the Applicant is not a genuine adherent to the Christian faith.

[10] The RAD found a number of contradictions between her Point of Entry notes [POE] and her evidence:

- In her interview with Canada Border Services Agency (CBSA) on March 24, 2019, the Applicant indicated the police were taking pictures but at the hearing, she testified they were staring at her;
- At the hearing, she indicated this incident happened in mid-December but in her Basis of Claim form [BOC], she indicated it occurred in late December and that the police came at the end of December;
- In her interview, she stated four to five police officers came to her home but at the hearing, she stated two people came to look for her.

[11] The RAD found the evidence regarding her belief to be vague, brief, and contradictory:

- The Applicant did not demonstrate an understanding or connection with Christianity that in the RAD's opinion could reasonably be expected from a genuine adherent;
- There was a lack of credible evidence regarding any emotional or spiritual connection to the Christianity;
- The Applicant was unclear about basic information on which her claim was based, namely why she was a Christian;
- The Applicant had the opportunity to provide sufficient credible evidence to support her claim because she had Counsel and an interpreter; however, Counsel chose not to ask questions before the RPD nor did the Applicant submit an affidavit with further information at the RAD.

[12] The RAD considered the corroborative evidence and found it not sufficient to address the concerns with the evidence. The evidence demonstrates the Applicant has participated in some Christian activities in Canada, namely a letter from Reverend Ko dated October 13, 2020 and a Baptismal Certificate.

[13] That said, the RAD noted there is persecution of Christians in China and even if the PSB were not seeking the Applicant, if she were a genuine Christian or perceived as one, "she would have a claim." Thus the stakes are high in this case.

[14] The RAD noted the Applicant's participation in Christian activities in Canada is not in question; however, the issue is that there is insufficient credible evidence to support a finding the Applicant is a genuine Christian.

[15] The RAD also considered whether the Applicant might have a *sur place* claim on the basis she participated in some Christian activities in Canada but found insufficient evidence to conclude her activities may have come to the attention of the authorities. Moreover, as there is insufficient evidence the Applicant is a genuine practitioner of Christianity, the RAD found her *sur place* claims failed. The RAD concluded it is unlikely the Applicant would continue Christian activities in China, and that there is insufficient evidence to conclude it is likely that authorities would perceive her as a Christian; and even she participated in some Christian activities in Canada, there is insufficient evidence of forward-looking risk.

IV. Issues

[16] The issues are:

A) Did the RAD breach procedural fairness?

B) Was the Decision reasonable?

V. Standard of Review

A. *Principle of Procedural Fairness*

[17] With regard to the first issue, questions of procedural fairness are reviewed on the correctness standard: *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, per Binnie J at para 43. That said, I wish to note in *Bergeron v Canada (Attorney General)*, 2015 FCA 160, per Stratas JA at para 69, the Federal Court of Appeal says a correctness review may need to take place in "a manner 'respectful of the [decision-maker's] choices' with 'a degree of deference': Re: *Sound v Fitness Industry Council of Canada*, 2014 FCA 48, 455 N.R. 87 at

paragraph 42." But, see *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [Rennie JA]. In this connection I note the Federal Court of Appeal's recent decision which held judicial review of procedural fairness issues is conducted on the correctness standard: see *Canadian Association of Refugee Lawyers v. Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 per de Montigny JA [Near and LeBlanc JJA concurring]:

> [35] Neither *Vavilov* nor, for that matter, *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, have addressed the standard for determining whether the decision-maker complied with the duty of procedural fairness. In those circumstances, I prefer to rely on the long line of jurisprudence, both from the Supreme Court and from this Court, according to which the standard of review with respect to procedural fairness remains correctness.

[18] I also note from the Supreme Court of Canada's teaching in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 23 that the standard of review for procedural fairness is correctness:

> [23] Where a court reviews the merits of an administrative decision (i.e., judicial review of an administrative decisions <u>other than a review related to a breach of natural justice and/or the duty of procedural fairness)</u>, the standard of review it applies must reflect the legislature's intent with respect to the role of the reviewing court, except where giving effect to that intent is precluded by the rule of law. The starting point for the analysis is a presumption that the legislature intended the standard of review to be reasonableness.
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> [Emphasis added]

[19] In *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 50, the Supreme Court of Canada explains what is required of a court reviewing on the correctness standard of review:

> [50] When applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process;

> it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal's decision was correct.

B. *Reasonableness*

[20] With regard to reasonableness, the appropriate standard of review is reasonableness; see *Canada (Minister of Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35.

[21] In *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*], issued at the same time as the Supreme Court of Canada's decision in *Vavilov*, the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

> [31] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
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> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "whether the decision 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 the decision" (*Vavilov*, at

> para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
>
> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100).
>
> [Emphasis added]

[22] The Supreme Court of Canada in *Vavilov* at para 86 states, "it is not enough for the outcome of a decision to be justifiable. Where reasons for a decision are required, the decision must also be justified, by way of those reasons, by the decision-maker to those to whom the decision applies," and provides guidance that the reviewing court decide based on the record before them:

> [126] That being said, a reasonable decision is one that is justified in light of the facts: *Dunsmuir*, para. 47. The decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them: see *Southam*, at para. 56. The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it. In *Baker*, for example, the decision maker had relied on irrelevant stereotypes and failed to consider relevant evidence, which led to a conclusion that there was a reasonable apprehension of bias: para. 48. Moreover, the decision maker's approach would *also* have supported a finding that the decision was unreasonable on the basis that the decision maker showed that his conclusions were not based on the evidence that was actually before him: para. 48.
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> [Emphasis added]

VI. Analysis

A. *Did the RAD breach procedural fairness?*

[23] The Applicant submits the RAD raised new credibility issues about the alleged inconsistencies in her evidence. This she says breached principles of natural justice because none of the alleged discrepancies were raised by the RPD in the first instance and the RAD did not give the Applicant notice of its new concerns. The Applicant cites to *Husian v Canada (Citizenship and Immigration)*, 2015 FC 684 at para 10 [*Husian*], where Justice Hughes said that where: "the RAD chooses to take a frolic and venture into the record to make further substantive findings, it should give some sort of notice to the parties and give them an opportunity to make submissions." The Applicant submits while it was open to the RAD to assess the Applicant's credibility, it is not entitled to raise new issues on appeal of its own motion without notice to an applicant, as well as an opportunity to respond, citing to *Fu v Canada (Citizenship and Immigration)*, 2017 FC 1074 [per Diner J] at paras 12-15 [*Fu*].

[24] However, in this case it was the Applicant's counsel who raised credibility as an issue before the RAD. This made her credibility one of the determinative issues before the RAD, as it was before the RPD. Therefore the RAD did not "frolic and venture into the record" as per *Husian* and *Fu*, and the credibility findings are not "new issues".

[25] It is well-settled that where an applicant's credibility is in issue before the RPD, it is not a breach of procedural fairness for the RAD to find an additional basis to question that credibility using the record that was before the RPD. When the credibility of a claimant is "at the heart of

the RPD's decision" and is included in the grounds for appeal, the RAD is entitled to make independent credibility findings without giving the applicant another opportunity to make submissions. In this respect, there is no requirement to provide a running score to an applicant; credibility was at the heart of the RPD's concerns, and the Applicant chose to put it in issue before the RAD. She cannot say she was surprised when the RAD considered and made determinations on the very issue she put before the RPD. She was not entitled to any further notice or an opportunity to respond, see *Yimer v Canada (Citizenship and Immigration),* 2019 FC 1335 [per Bell J] at para 17, citing to *Corvil v Canada (Citizenship and Immigration),* 2019 FC 300 [per LeBlanc J as he then was] at para 13:

> [17] The RAD did not breach the principles of procedural fairness. In this case, the RPD's findings and the grounds of appeal before the RAD concerned the applicant's credibility. Where the applicant's credibility is already in issue before the RPD, it is not a breach of procedural fairness for the RAD to find an additional basis to question that credibility using the record that was before the RPD. The applicant knew that credibility was a live issue given the RPD's original decision. Credibility is listed in his grounds of review to the RAD. Accordingly, findings regarding the applicant's credibility based on the RAD's independent analysis of the do not constitute "new issues" giving rise to a right to be given notice and an opportunity to respond (*Corvil v Canada (Citizenship and Immigration),* 2019 FC 300 at paras 13–15 [*Corvil*]; *Oluwaseyi* at para 13; *Sary v Canada (Minister of Citizenship and Immigration),* 2016 FC 178 at paras 27–32; *Ibrahim v Canada (Minister of Citizenship and Immigration),* 2016 FC 380 at paras 21–30). I acknowledge that my conclusion and the case law cited are not in agreement with the decision in *Palliyaralalage v Canada (Citizenship and Immigration),* 2019 FC 596.
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> [18] As in *Corvil* at paragraph 16, even leaving aside the RAD's two independent findings with respect to the applicant's credibility, the RAD's decision remains reasonable. In this case, the RAD upheld the conclusions at which the RPD arrived regarding the applicant's credibility, which was reasonable. The upholding of those conclusions is sufficient to warrant the dismissal of the applicant's appeal.

[26] See also *Smith v Canada (Citizenship and Immigration)*, 2019 FC 1472 [*Smith*], where I noted the jurisprudence and concluded the RAD may make independent findings of credibility if credibility was raised before the RPD at paras 31-32:

> [31] In addition, as noted in *Nuriddinova v Canada (Citizenship and Immigration)*, 2019 FC 1093, per Walker J at paras 47-48, the RAD would in any event have been 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:
>
> > [47] The RAD's role on appeal is to consider the record before the RPD and to review the RPD's decision against the issues raised by the appellant, respecting the basic principle of procedural fairness that a party must have an opportunity to respond to new issues that will have a bearing on a decision affecting them (*Tan* at para 32). 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. (*Adeoye* at paras 12-13, citing *Sary v Canada (Citizenship and Immigration)*, 2016 FC 178 at paras 27-32). This principle was recognized in *Kwakwa*, cited by the Applicants, where Justice Gascon stated that a new question or issue is one which "constitutes a new ground or reasoning on which a decision-maker relies, other than the grounds of appeal raised by the applicant, to support the valid or erroneous nature of the decision appealed from" (*Kwakwa* at para 24).
> >
> > [48] I agree with the Applicants that the issue of credibility is very broad and that the RAD cannot have *carte blanche* to identify any new credibility issue. However, the Applicants raised the issue of Ms. Nurridinova's testimony broadly, stating that it was "consistent, uncontradicted, plausible and corroborated". The RAD directly addressed this ground of appeal, highlighting inconsistencies between her BOC and testimony, and Mr.

> Nurridinov's testimony, that arose from questions posed by the RPD. As a result, I find that the RAD did not raise a new question in support of its decision and did not breach the Applicants' right to procedural fairness.
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> [Emphasis added]
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> [32] In this connection it is noteworthy that the Applicant raised the matter of credibility in his submissions to the RAD, in which he also submitted that the RAD should agree that "we are then to presume that [the mother] was credible and her testimony was true."

[27] And without belabouring the point see also the ruling in this issue recently made by Justice Diner, quoting Justice Walker, in *Lin v. Canada (Citizenship and Immigration)*, 2022 FC 682 at paras 7 and following:

> [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 CF 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), 2*019 FC 1093, where Justice Walker had stated at para 47:
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> > 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.

[28] Therefore, in the case at bar, the RAD was entitled to make new credibility findings based on the record it reviewed, because 1) the RPD based its findings on credibility and 2) the Applicant made submissions on the RPD's credibility findings before the RAD.

[29] Procedural fairness was not breached.

B. *Is the Decision reasonable?*

(1) Microscopic assessment of evidence

[30] The RAD found a number of contradictions between the Applicant's POE and her testimony. My comments follow each:

- In her interview with Canada Border Services Agency (CBSA) on March 24, 2019, the Applicant indicated the police were taking pictures but at the hearing, she testified they were staring at her. Court Comment: There is no inconsistency because it is possible her picture was being taken while she was being stared at.

- At the hearing, she indicated this incident happened in mid-December but in her BOC, she indicated it occurred in late December and that the police came at the end of December. Court Comment: In fact, the Applicant's evidence was that "I think probably in the middle of the month [of December, ed.]". I do not see the alleged discrepancy on this record.

- In her interview, she stated four to five police officers came to her home but at the hearing, she stated two people came to look for her. Court Comment: I accept this indicates inconsistency as to the level of state interest in the Applicant that rises above merely microscopic analysis.

[31] The RAD found there is "insufficient credible evidence to conclude it is more than likely the incident occurred." I agree consistency is a hallmark of credibility in refugee claims and that a decision-maker is entitled to draw a negative inference from an applicant's inconsistent testimony: see *Singh v Canada (Citizenship and Immigration)*, 2020 FC 179 [per Pentney J] at para 17, citing to *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 [per Gleason J as she then was] at paras 41-46, and *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 [per Grammond J] at paras 16-20.

[32] However, on these findings it appears the reasoning is flawed.

[33] I am also mindful of this Court's warning against placing great emphasis on POE statements because the "circumstances surrounding the taking of those statements is far from ideal and questions about their reliability will often arise", see *Cetinkaya v Canada (*Citizenship and Immigration), 2012 FC 8 [per Russell J] at para 50, citing *Wu v Canada (Citizenship and Immigration)*, 2010 FC 1102 [per O'Reilly J] at para 16.

(2) Level of religious knowledge

[34] The Applicant submits, and I agree, the RAD was unreasonable in their assessment of whether she is a genuine Christian. While the RAD acknowledged she was able to articulate "some fundamental concepts" about her faith, it found her testimony about Christianity too vague to be credible and she failed to demonstrate an "emotional or spiritual connection" to her faith.

[35] First, the Applicant answered in credible detail when questioned about the Christian faith and the RAD's finding was particularly unreasonable given the Applicant was asked so few questions about the Christian faith. Specifically, the Applicant points to the following excerpt from the RPD hearing:

> RPD: … So, I am asking you to describe one of the talks from the previous meetings or services you have gone to.
>
> Applicant: So, there was a female. A practitioner. She shared her stories with us the time before last Sunday. She was not religious but she had God's blessings. She had cancer before she started to believe in Jesus. After she got cancer, she prayed every single day and her cancer healed. I thought that was a miraculous story and it was very touching.
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> RPD: And can you tell me about some of the Bible stories that you discuss or that you have heard about in your services?
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> Applicant: My favourite story from the holy Bible is one story from the Gospel of Mark. It talked about a widow offered coins to the treasury and she was very poor but she offered all of the money she had. In Jesus's eyes, being rich or poor is not how much money you have, it is how much you offer. So, I was really touched by this Bible story.
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> RPD: Do you read the Bible?
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> Applicant: Yes.

RPD: How often?

Applicant: I have really bad memory but I do every day a little bit. I read a little bit every day.

RPD: OK. Can you tell me what the meaning of Easter is?

Applicant: That is the day when Jesus raised from the dead.

RPD: So, what happened before that?

Applicant: That Is Jesus' crucifixion.

RPD: And how did that happen?

Applicant: So, Jesus was crucified on the cross at Golgotha and there were two guards on also by the two sides of him, left and right. And Jesus died at noon.

RPD: Who was responsible for his crucifixion?

Applicant: It's Pilate at the time.

RPD: What denomination is the church you go to here?

Applicant: That is Pentecostal.

RPD: And what is Pentecost?

Applicant: Outside, I am not quite familiar with but I know our church emphasizes the Holy Spirit.

RPD: So you don't know what Pentecost is?

Applicant: Yes I know Pentecost. That is a holiday.

RPD: So, explain it to me.

Applicant: That is the day when the Holy Spirit descended.

RPD: And when is it celebrated? When is it celebrated?

Applicant: I believe it is in September.

RPD: Why do you believe that?

Applicant: Last time I remember mentioned once but I don't quite remember. Sorry.

> RPD: OK. Who are you living with in Canada?
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> Applicant: Can I add something?
>
> RPD: Yes.
>
> Applicant: I think I remember the first mention it was around May, the Pentecost. I do not remember. Sorry.

[36] The Applicant also relies on *Zeng v Canada (Citizenship and Immigration)*, 2021 FC 318; I agree with Justice Barnes who held "immigration decision-makers must be very careful about drawing firm credibility conclusions about the authenticity of a person's religious or philosophical beliefs based on supposed weaknesses in the knowledge of relevant doctrine":

> [6] This is a case where both the RPD and the RAD purported to assess the *bona fides* of the Applicant's asserted belief system as a disciple of Falun Gong. As this Court has frequently cautioned, immigration decision-makers must be very careful about drawing firm credibility conclusions about the authenticity of a person's religious or philosophical beliefs based on supposed weaknesses in the knowledge of relevant doctrine: see *Dong v Canada (MCI)*, 2010 FC 55, [2010] FCJ No 54; *Chen v Canada (MCI)*, 2007 FC 270, [2007] FCJ No 395; *Feradov v Canada*, 2007 FC 101, [2007] FCJ No 135; *Huang v Canada (MCI)*, 2008 FC 346, [2008] FCJ No 452; *Ullah v Canada (MCI)*, [2000] FCJ No 1981, 101 ACWS (3d) 792; and *Wang v Canada (MCI)*, 2011 FC 1030, [2011] FCJ No 1291.
>
> [7] Caution is warranted because a legitimate devotee may lack a capacity to deeply understand, interpret or articulate a complex code of applicable principles. That problem can be exacerbated where the relevant doctrine is obscure or where the decision-maker fails to sufficiently probe the issue.

[37] Pentecost is an event in the Christian faith the timing of which is tied to Good Friday / Easter Sunday. Those days, like Passover in the Hebrew faith and other religious events in other faiths, are moveable events determined in part by reference to the lunar calendar. And while the

Applicant apparently answered this question incorrectly as occurring in September, the record shows she corrected herself immediately stating it was in May. She should not be faulted for coming to a correct answer albeit after a very brief false start. That is the essence of impermissibly microscopic analysis.

[38] Moreover, the RAD faulted the Applicant for what it described as her lack of any credible evidence of her "emotional or spiritual connection" to Christianity. In this respect, the Applicant submits and I agree it is unclear how she could have demonstrated a sufficient "emotional or spiritual connection" to Christianity to satisfy the RAD, or how the RAD could measure her "emotional or spiritual connection" to the Christian faith.

[39] The Applicant relies as do I on longstanding jurisprudence of this Court set out in *Wei v Canada (Citizenship and Immigration),* 2010 FC 694. There, Justice Beaudry found the RPD erred by impugning the genuineness of a claimant's religious faith on the basis the applicant failed to demonstrated an "emotional" connection to Christianity:

> [17] Second, the Panel notes that the Applicant did not appear to have an emotional commitment to the Christian faith. This is a somewhat perplexing finding, particularly as the Applicant testified through an interpreter, and I don't see how the Board could properly assess the Applicant's emotional commitment in these circumstances.
>
> [18] I am of the opinion that the Court's intervention is warranted.

[40] The Applicant in the case at bar also testified through an interpreter. I would only add on this point that I am as perplexed as was Justice Beaudry and frankly do not see how the RAD

could properly assess the Applicant's emotional, let alone her spiritual connection to the Christian faith. This finding does not pass muster.

[41] Third, it appears to me the RAD erred by drawing an adverse inference from the Applicant's former counsel failing to test her Christian knowledge at the hearing, and from failing to file new evidence to support her position on appeal to the RAD. With respect, the RPD is the master of its own procedure and had the flexibility to control its own process in determining how to proceed in a given case (*Rodriguez Vieira v Canada (Citizenship and Immigration)*, 2012 FC 838 [per Mactavish J as she then was] at para 14). The Member's ability to make inquiries of the Applicant was in no way circumscribed by the content of counsel's questions. As stated in *Zeng, supra* at para 11: "… Indeed, the RPD has a responsibility to prompt and probe where it harbours a concern like this and the RAD has a corresponding responsibility to hold the RPD to that interrogatorial standard." And, with respect, there is no merit in the proposition that an applicant may file new evidence to support her position on appeal unless it was not available at the time of the RPD hearing.

[42] It seems to me the RAD missed the mark in criticizing the Applicant for the RPD's failure to "prompt and probe" as required by this Court in Justice Barnes' decision in *Zeng*.

[43] I also note it may be unreasonable for the RAD to focus on religious knowledge as the sole barometer of the genuineness of faith. There is a "very low bar" on refugee claimants to demonstrate religious knowledge as a requirement for proving religious identity. It is the sincerity of a person's beliefs or practices that matters, not whether the beliefs or practices are

objectively valid, and any inquiry into religious beliefs must be approached with extreme caution because of the subjective nature of such beliefs, see *Huang v Canada (Citizenship and Immigration)*, 2012 FC 1002 [per Mandamin J]:

> [11] More recently in *Lin v Canada (Minister of Citizenship & Immigration)*, 2012 FC 288 at para 61, Justice Russell stated:
>
> > Given the low bar this Court has set for claimants seeking protection to demonstrate religious knowledge, it is my view that, as in *Huang*, the RPD in this case engaged in an overly stringent and microscopic examination of the Applicant's knowledge of Falun Gong. It erroneously weighed his testimony on this issue against its own misguided idea of what a person in the Applicant's circumstances should or would know or understand. I agree with the Applicant that, in so doing, the RPD based its finding that he is not a Falun Gong practitioner on unattainable and unreasonable requirements for knowledge of the practice. The RPD also failed to consider the fact that, as Justice Francis Muldoon said in *Valtchev v. Canada (Minister of Citizenship & Immigration)*, [2001] F.C.J. No. 1131 (Fed. T.D.), "refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu."
>
> [12] The inquiry by courts (and tribunals) into religious belief is to be approached with caution given the very subjective and personal nature of a person's religious belief. In *Syndicat Northcrest v. Amselem*, 2004 SCC 47(*Amselem*) the Supreme Court of Canada stated that claimants seeking to invoke freedom of religion should not need to prove the validity of their beliefs are objectively recognized as valid. The Supreme Court indicated that a person must show sincerity of belief and not that a particular belief is "valid":
>
> > **50** ...Accordingly, courts should avoid judicially interpreting and thus determining, either explicitly or implicitly, the content of a subjective understanding of religious requirement, "obligation", precept, "commandment", custom or ritual. Secular judicial determinations of theological

> or religious disputes, or of contentious matters of religious doctrine, unjustifiably entangle the court in the affairs of religion.
>
> **51** That said, while a court is not qualified to rule on the validity or veracity of any given religious practice or belief, or to choose among various interpretations of belief, it is qualified to inquire into the sincerity of a claimant's belief, where sincerity is in fact at issue: see *Jones, supra; Ross, supra*. It is important to emphasize, however, that sincerity of belief simply implies an honesty of belief: see *Thomas v. Review Board of the Indiana Employment Security Division, supra*.
>
> ...
>
> **53** Assessment of sincerity is a question of fact that can be based on several non-exhaustive criteria, including the credibility of a claimant's testimony (see *Woehrling, supra*, at p. 394), as well as an analysis of whether the alleged belief is consistent with his or her other current religious practices. It is important to underscore, however, that it is inappropriate for courts rigorously to study and focus on the past practices of claimants in order to determine whether their current beliefs are sincerely held...
>
> [emphasis added]

[44] Compliance with this observation does not involve the Court reweighing the evidence. Instead it entails the RAD comporting itself in accordance with constraining jurisprudence as required by *Canada Post, supra* at paras 31 and 32.

VII. Conclusion

[45] In my respectful view, the Applicant has not shown the RAD breached her right to procedural fairness. However, judicial review will be granted because the Decision is

unreasonable with respect to the RAD's assessment of the Applicant's religious knowledge and whether she is a genuine Christian.

VIII. Certified Question

[46] Neither party proposed a question of general importance, and none arises.

JUDGMENT in IMM-4459-21

THIS COURT'S JUDGMENT is that judicial review is granted, the Decision is set aside, the matter is remanded for reconsideration by a differently constituted RAD, no question of general importance is certified, and there is no Order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4459-21
STYLE OF CAUSE:	XIAOJING SUN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY WAY OF VIDEOCONFERENCE
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