

Federal Court



Cour fédérale

**Date: 20220614**

**Docket: IMM-3516-21**

**Citation: 2022 FC 890**

**St. John's, Newfoundland and Labrador, June 14, 2022**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**ZEHE CHEN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS AND JUDGMENT**

[1] Mr. Zehe Chen (the “Applicant”) seeks judicial review of the decision of the Immigration and Refugee Board, Refugee Appeal Division (the “RAD”), determining that he is neither a Convention Refugee or 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. He bases his claim for protection upon his status as a Falun Gong practitioner. The Immigration and Refugee Board, Refugee Protection Division (the “RPD”) rejected his claim on credibility concerns. The RAD confirmed those findings.

[3] The Applicant argues that the RAD’s credibility findings are unreasonable.

[4] The Minister of Citizenship and Immigration (the “Respondent”) submits that the decision is reasonable, having regard to the evidence submitted.

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

[6] 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.

[7] The RAD focused on the Applicant’s medical booklet and his knowledge of the principles of Falun Gong in making its negative credibility findings. The Applicant argues that it was unreasonable for the RAD to make negative credibility findings about his practice of Falun Gong and his fear of persecution on the basis of its “study” of the medical booklet.

[8] I agree. In my opinion, the reasons of the RAD do not meet the requirements of “justification, transparency and intelligibility” required by the decision in *Vavilov, supra*.

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

**JUDGMENT in IMM-3516-21**

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed, the decision is set aside and the matter remitted to a differently constituted panel of the Immigration and Refugee Board, Refugee Appeal Division for re-determination. There is no question for certification.

“E. Heneghan”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3516-21

**STYLE OF CAUSE:** ZEHE CHEN v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

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

**DATE OF HEARING:** APRIL 20, 2022

**REASONS AND JUDGMENT:** HENEGHAN J.

**DATED:** JUNE 14, 2022

**APPEARANCES:**

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