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

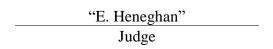
[1] Mr. Zehe Chen (the "Applicant") seeks judicial review of the decision of the Immigration and Refugee Board, Refugee Appeal Division (the "RAD"), determining that he is neither a Convention Refugee or a person in need of protection, pursuant to section 96 and subsection 97(1), respectively, of the *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.



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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Sally Thomas FOR THE RESPONDENT

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