

Federal Court



Cour fédérale

Date: 20220713

Docket: IMM-4517-20

Citation: 2022 FC 1026

Toronto, Ontario, July 13, 2022

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

YU WANG

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant is a refugee claimant from China who seeks judicial review of a decision [Decision] of the Refugee Appeal Division [RAD] finding that he is neither a Convention refugee nor a person in need of protection pursuant to ss 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The determinative issue before the RAD was credibility.

[2] For the reasons that follow, I find that the Decision was reasonable and that the application should be dismissed.

I. Background

[3] The Applicant, Yu Wang, is a citizen of China. He is seeking refugee status in Canada, on the basis that he will be persecuted in his home country because the authorities know he is a practitioner of Falun Gong [FG].

[4] The Applicant states that he began practicing FG in early 2016, and shortly thereafter began attending group practices. On September 23, 2017, a group session the Applicant was attending was raided by the Public Security Bureau [PSB]. He managed to escape, but asserts that two days later, while he was still hiding, the PSB came looking for him, searching his house and interrogating his wife. On September 25, 2017, the PSB returned to the Applicant's house and allegedly left a summons with his wife, ordering the Applicant to submit himself to the authorities.

[5] The Applicant states that he decided to flee China, and with the assistance of a smuggler travelled from China to Canada on December 24, 2017 on his own passport.

[6] On June 19, 2019, the RPD rejected the Applicant's claim for refugee status. The RPD stated that the determinative issue was the Applicant's credibility and made a number of negative credibility findings. First, it found that the Applicant's identity as a FG practitioner was suspect due to his lack of knowledge of details regarding the FG faith. Second, it found the Applicant's

assertion that the PSB were after him to be suspect in view of his ability to leave China with his passport despite the Golden Shield screening program. Third, the RPD found that documents submitted by the Applicant, including the summons, were not genuine.

[7] The only issue raised before the RAD was whether the RPD had erred in its finding that the summons was not genuine. The RAD found that credibility findings regarding the Applicant's lack of knowledge of FG and ability to depart the country on his own passport undermined the reliability of the summons and gave it no weight. The RAD noted that the RPD was incorrect to rely on a revoked *Jurisprudential Guide* [JG] in order to conclude that the Applicant's testimony about his exit from China was not credible. On its own analysis of the National Documentation Package [NDP], however, the RAD similarly concluded that it was not credible that the PSB did not flag the Applicant while he was exiting the country.

II. Issues and Standard of Review

[8] The Applicant seeks to raise the following four issues:

- a) Did the RAD err in its assessment of the Applicant's identity as a FG practitioner?
- b) Did the RAD err in finding that the summons was not genuine?
- c) Did the RAD err in finding that the Applicant was not credible due to his ability to exit China using his own passport?
- d) Did the RAD err in failing to assess the Applicant's supporting documents?

[9] The Respondent argues that there is only one issue before the Court; that is, whether the RAD's Decision to rebut the presumption of truthfulness in the summons was reasonable. It asserts that the Applicant cannot raise issues in the judicial review that were not raised before the

RAD, as that would essentially allow the Applicant to circumvent the RAD and bring his complaints about the RPD decision directly to the Federal Court: *Dahal v Canada (Citizenship and Immigration)*, 2017 FC 1102 [*Dahal*] at para 35. Thus, it argues that the first, third and fourth issues proposed by the Applicant cannot be considered.

[10] The Applicant gives two reasons as to why it asserts that the Court can consider the issues raised. First, he argues that the RAD has a duty to conduct an independent assessment of all issues on a correctness standard. Second, he asserts that the RAD made its own findings on the additional issues and therefore they are properly the subject of review.

[11] On the first point, I agree with the Respondent that the RAD only has an obligation to deal with the issues put before it by an Applicant. In this case, the RAD expressly stated:

[10] The Appellant is challenging the RPD's finding that the summons is not genuine. He relies on the National Documentation Package (NDP) to argue that the summons conforms to the standard.

[11] He relies on case law to argue the RPD cannot simply dismiss a document because fraudulent documents are readily available in the country of origin.

[12] He is not challenging the other findings of the RPD.

[12] Thus, the Applicant did not raise the first, third and fourth issues before the RAD and the RAD had no obligation to consider these issues.

[13] With respect to the second point, I do not agree that the RAD made its own separate credibility findings on the first and fourth issues. Rather, in my view the RAD accepted the

findings of the RPD and referenced those findings in its assessment of the summons. Given this, these issues will not be considered by this Court.

[14] However, in my view, whether the RAD independently considered the third issue is more nuanced. In *Dahal*, Chief Justice Crampton explains at paragraph 34 that:

If the RAD conducts an assessment of whether the RPD may have committed additional errors not identified by an appellant, that aspect of the RAD's decision may be properly challenged before this Court where the RAD identifies an error on the part of the RPD and then takes one of the actions set forth in paragraphs 111(1)(a) – (c).

[15] Paragraphs 111(1)(a) – (c) refer to sections of IRPA setting out the powers of the RAD on appeal. Those paragraphs read:

Decision

111 (1) After considering the appeal, the Refugee Appeal Division shall make one of the following decisions:

- (a) confirm the determination of the Refugee Protection Division;
- (b) set aside the determination and substitute a determination that, in its opinion, should have been made; or
- (c) refer the matter to the Refugee Protection Division for re-determination, giving the directions to the Refugee Protection

Décision

111 (1) La Section d'appel des réfugiés confirme la décision attaquée, casse la décision et y substitue la décision qui aurait dû être rendue ou renvoie, conformément à ses instructions, l'affaire à la Section de la protection des réfugiés.

Division that it considers appropriate.

[16] Under a separate heading in the Decision, the RAD considers the credibility relating to the Applicant's exit from China using his passport. The RAD states in the Decision that the RPD was incorrect to rely on the revoked JG with respect to the Applicant's exit from China. The RAD then conducts its own review of the information in the NDP and agrees with the RPD that the Applicant was not credible in asserting that he was able to exit China on his passport while allegedly being wanted by the PSB.

[17] Thus, the RAD conducted an assessment of whether the RPD committed an additional error not identified by the Applicant, and then went on to make its own assessment of the evidence relating to the Applicant's exit from China. In my view, the third issue accordingly falls into the category identified in *Dahal* at paragraph 34 and the RAD's finding on the Applicant's credibility relating to his exit from China can also be reviewed for its reasonableness.

[18] The analysis below will therefore consider two issues:

- a) Did the RAD err in finding that the summons was not genuine?
- b) Did the RAD err in finding that the Applicant was not credible due to his ability to exit China using his own passport?

[19] The parties assert and I agree that the presumptive standard of reasonableness applies to the RAD's decision: *Elmi v Canada (Citizenship and Immigration)*, 2020 FC 296 [*Elmi*] at para 8; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 16-17.

[20] In conducting a reasonableness review, the Court must consider “the decision actually made by the decision maker, including both the decision-maker’s reasoning process and the outcome” (*Vavilov* at para 83) to determine whether the decision is “based on an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at paras 85-86; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at paras 2, 31). The decision must be read holistically and contextually and not as a line-by-line treasure hunt for error: *Vavilov* at paras 97 and 102; *Elmi* at para 9. A reasonable decision, when read as a whole and taking into account the administrative setting, bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 91-95, 99-100.

III. Analysis

A. *Did the RAD err in finding that the summons was not genuine?*

[21] The Applicant argues that it was unreasonable for the RAD to disregard the summons as it conformed with the example in the NDP and there was a presumption of truthfulness that attached to the document. He asserts that the RAD found that the summons was not genuine because of its finding that the Applicant lacked FG knowledge. However, he contends that the RAD did not conduct a proper analysis of this latter issue. The Applicant argues that the RAD concluded that even if it found the summons authentic, it would still have rejected his claim due to other credibility concerns. The Applicant contends that this conclusion is unintelligible and emphasizes the problems with the RAD’s Decision.

[22] The Respondent argues that the Applicant has not raised an independent argument to support his contention that the RAD's finding with respect to the summons was unreasonable. Rather, it asserts that the Applicant indirectly seeks to argue that the RPD erred in its findings with respect to the credibility of his asserted FG knowledge, which was not an issue raised before the RAD. The Respondent relies on *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 [*Lawani*] at paras 20-26 for the proposition that the presumption of truthfulness can be rebutted by a negative credibility finding. I agree.

[23] The RAD acknowledges that the finding that the summons is not genuine is an implausibility finding, which can only be made in the clearest of cases, but notes that there is sufficient evidence to doubt its authenticity based on the serious credibility concerns found by the RPD relating to the Applicant's lack of knowledge.

[24] As held above, the Applicant cannot challenge the finding that he lacked knowledge of FG practice as this was not an independent finding of the RAD. Rather, the RAD merely confirmed the finding of the RPD, which was not challenged by the Applicant. As stated by the RAD:

[21] The summons is a consequence of the Appellant's Falun Gong practice. The Appellant alleged there was a PSB raid and that he had been a Falun Gong practitioner for four years at the time of his hearing. Yet, he was unable to explain the basic concept of attachments, which are essentially vices (desire, anger, jealousy, etc.) that lead to disease and sickness.

[22] The Appellant's knowledge was tested at the hearing by his Counsel and the RPD Member, but he was unable to explain basic concepts. The RPD found that he lacked knowledge. The Appellant is not challenging this finding.

[25] On the basis of this lack of knowledge of FG practice, the RAD concluded that the reliability of the summons is eroded and the Applicant's version of events is no longer taken as being internally consistent. In my view, it was reasonable for the RAD to find that the Applicant's lack of knowledge of FG practice suggested that he would not be targeted as being an FG practitioner and it was unlikely that there would be a summons for him by the PSB.

[26] Further, if there was a genuine summons, this would impact the Applicant's ability to exit China with his own passport. As reasonably noted by the RAD, the Applicant did not challenge the credibility finding of the RPD relating to his leaving on his own passport, given the evidence relating to the screening network of the Golden Shield. As outlined further below, I also consider the RAD's independent analysis based on the NDP to be reasonable.

[27] The Applicant relies on the decision in *Liu v Canada (Citizenship and Immigration)*, 2020 FC 576 at paragraph 89, where the Court cautioned that "as a general rule the question of the genuineness of a foreign public document should be examined independently of general concerns about a claimant's credibility before it is rejected... . Otherwise, the decision maker risks reasoning in a way that begs the very question at issue: the corroborative evidence is not believed simply because the claimant is not believed." However, I agree with the Respondent that as the underlying credibility findings were not challenged, it was reasonable for the RAD to rely on these findings in its consideration of the genuineness of the summons.

[28] Further, I agree with the Respondent that the Applicant has taken the statement that the RAD would have rejected his claim even if the summons was authentic out of context. The RAD

is not, as the Applicant suggests “willing to accept the authenticity of the [s]ummons”. The RAD is underscoring that the Applicant would still be left with the remaining unchallenged credibility findings, which do not support his overall claim.

[29] In my view, there is no reviewable error identified by the Applicant in the RAD’s analysis of the summons.

B. *Did the RAD err in its independent finding that the Applicant was not credible due to his ability to exit China using his own passport?*

[30] As noted earlier, the RAD identified an error in the RPD’s application of the JG to its analysis of the Applicant leaving China using his own passport. On the basis of this error, the RAD went on to independently consider this issue, noting that the credibility finding was not challenged by the Applicant. It found that the credibility concern was nonetheless supported by its review of the NDP.

[31] As stated by the RAD:

[35] I agree with the RPD. The Appellant’s assertion that he was able to exit China on his genuine passport despite being pursued by the PSB is not credible. While there is some evidence to suggest that individuals who are wanted are able to leave China on genuine or fraudulent documents, there is insufficient evidence for me to conclude that the Appellant was able to leave as described. It is not consistent with the documentary evidence. [Footnotes excluded]

[32] The RAD went on to conduct a thorough review of the NDP relating to the screening systems administered by the PSB and public security databases. The RAD noted that:

[40] Sources report that individuals have to go through several identify checks at Beijing airport run by different agencies,

including the PSB, the Exit and Entry authority, and the Frontier Inspections Bureau. There are automatic passport control gates. Major airports have a centralized name-matching alert capability. There are provincial and national blacklists of individuals who are not allowed to leave the country. The bans are from one month to one year.

[41] I do not believe that the Appellant could have left China on his genuine passport despite using the services of a smuggler. I do not find it credible that the PSB would not flag him in the system, given the interest they have in him.

[33] In my view it was reasonable for the RAD to rely on the information from the NDP and to conclude that the Applicant's evidence did not provide for "a believable or detailed explanation of how he circumvented the Golden Shield, though he used his own passport."

[34] The Applicant cites the decision in *Huang v Canada (Citizenship and Immigration)*, 2017 FC 762, where Justice Russell addressed a similar argument regarding China's Golden Shield security system and wanted individuals departing the country (at paras 64-68). However in that case, the applicant provided specific evidence regarding how she evaded the system. No such evidence was before the RAD or is before this Court in this case. The Applicant has not identified any country condition evidence or evidence in the record that contradicts the RAD's conclusions.

[35] In my view, the Applicant has not established that the RAD erred in its analysis. Further, in my view, the Applicant has not established that the RAD's reasons are irrational or incoherent and, as such, there is no basis to find that the Decision was unreasonable. The application shall accordingly be dismissed.

[36] No question for certification was raised by the parties and none arises in this case.

JUDGMENT IN IMM-4517-20

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. There is no question for certification.

"Angela Furlanetto"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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