Federal Court  Cour fédérale

Date: 20221128

Docket: IMM-1624-21

Citation: 2022 FC 1633

Ottawa, Ontario, November 28, 2022

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

DO MEE TUNG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Ms. Tung challenges a Pre-Removal Risk Assessment [PRRA] decision that she would not be subject to risk of persecution, torture, risk to life or risk of cruel and unusual treatment or punishment if returned to China.

[2] The Applicant entered Canada on November 22, 2001, and made a refugee claim. She claimed to have a well-founded fear of persecution by the Chinese government because she was

a Falun Gong practitioner. The Refugee Protection Division [RPD] determined that she was a Convention refugee on October 31, 2002. She became a permanent resident of Canada on May 12, 2004.

[3] The Minister submitted a cessation application on April 24, 2014. On February 27, 2018, the RPD finding that Ms. Tung "has shown a voluntary intent to re-avail herself of the protection of her country of nationality and the reasons for which she sought refugee protection have ceased to exist" allowed the Minister's application.

[4] The evidence on which the RPD granted the cessation application was the conduct of the Applicant in re-availing herself to China commencing shortly after she obtained permanent resident status. The RPD found the following:

a. Ms. Tung obtained a Chinese passport on June 11, 2004;

b. When her Chinese passport expired, Ms. Tung received a new Chinese passport on May 20, 2009; and

c. Ms. Tung travelled to China 12 times between 2004 and 2010.

[5] The RPD found that her travel to China was voluntary:

> There is no evidence to demonstrate that the respondent's application for Chinese passports and her 12 trips to China were not voluntary. She was not under duress or constrained by circumstances beyond her control. It is not disputed that she applied for and obtained Chinese passports in order to return to China. The respondent may have had personal justifications for returning to China such as caring for her ill mother and assisting her imprisoned husband, but her actions were voluntary.

[6] The RPD found that Ms. Tung intended by her actions to re-avail herself of the protection of China. It held that applying for and obtaining a passport from China for the purposes of returning will, in absence of proof to the contrary, be considered as terminating refugee status. It found that she had not rebutted the presumption.

[7] Lastly, the RPD found that she obtained the protection of the Chinese authorities for the purposes of subsection 108(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], noting that she had applied for and obtained two Chinese passports, and entered China on 12 occasions.

[8] The RPD observed that paragraph 108(1)(e) of *IRPA* provides that refugee protection will cease if the reasons for which the person sought refugee protection have ceased to exist. In this regard, it found that the reason for her initial protection by Canada, being a practitioner of Falun Gong, had ceased. She testified that she stopped practicing Falun Gong after she arrived in Canada and has not practiced Falun Gong during any of her visits to China.

[9] An application for leave and judicial review of that decision was dismissed by this Court in December 2018.

[10] In her PRRA application, Ms. Tung alleged a fear of harm if returned to China for being a returning refugee claimant, her association with her husband who is a convicted felon, her history as a former Falun Gong member, and the lack of a hukou.

[11] The PRRA officer dismissed each of these concerns.

[12] First, it was accepted that she would be a returning refugee claimant and may fear returning to China because of that; however, the officer found that her fear is insufficient to find her to be at risk:

> I accept the applicant fears harm if returned to China for being a returning refugee claimant. However, this assessment must turn to whether the possibility of discrimination have [*sic*] risen to the level of persecution since her last visit to China in 2014 when she had already encountered state authorities, moved freely within the country, and was afforded the ability to obtain a passport from state officials all the while not being targeted by the state for being a retuning claimant.

[13] The officer concludes that matters have stayed the same since her last visit:

> She has therefore failed to adequately demonstrate how she is personally at risk if returned to China for being a returning claimant. This was determined on the balance of probabilities.

[14] Second, it was accepted that the Applicant's husband was imprisoned after his charge in 2012. The evidence was that she returned to China twice in 2012, and once in each of 2013 and 2014 to assist him.

[15] In her affidavit filed in support of her PRRA application, she attests: "I never visited my husband directly because I was afraid to do so." However, in the cessation decision, the RPD notes that she did visit the prison when in China:

> She has submitted a number of receipts of her payment to the detention centre care funds for her husband. She testified that she delivered "care funds" to the detention centre about once a month while she was in China. She stated that her husband's nephew

> delivered clothes and paid for the detention care fund on her behalf when she was not in China. The respondent testified that her husband's nephew paid for the care fund with money from her.
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> …
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> The respondent interacted with the Chinese authorities on her numerous trips to China. She testified that she travelled with a passport in her own identity. She cleared the border security officials at the airport when entering and exiting China. The respondent did not attract any adverse attention from the authorities. She also testified that she interacted with Chinese authorities at the detention centre where her husband has been imprisoned. To pay for her husband's detention care fund and to bring him clothing and personal items, she dealt with Chinese prison officials.

[16] The PRRA officer accepted that Ms. Tung may fear harm returning to China because she is a family member of a convicted felon; however, the officer found that her fear is insufficient to find her to be at risk as there was no evidence of a change in circumstances since her last visit in 2014:

> I accept the applicant fears harm if returned to China for being a family member of a convicted felon. However, this assessment must turn to whether the possibility of discrimination have [*sic*] risen to the level of persecution since her last visit to China in 2014 when, according to her testimony to the RPD, she had already encountered state authorities, visited her husband at his detention centre, and moved freely within the country all the while not attracting adverse attention from the authorities for being a family member of a convicted felon. I find the applicant and counsel have not rebutted how the presumption of state protection for the worst forms of discrimination have changed since her last visit to China and her testimony to the RPD. She has therefore failed to adequately demonstrate how she is personally at risk if returned to China for being a family member of a convicted felon. This was determined on a balance of probabilities.

[17] Third, the officer considered whether she would be at risk as a former Falun Gong member. Again, the officer acknowledged her fear in this regard, but affirmed that the assessment must turn on whether the possibility of discrimination has risen to the level of persecution since her last visit to China in 2014. The officer noted that there was no evidence presented that she would receive any treatment different than she had received in the years before when she retuned to China. It was found that risk on this ground was not made out.

[18] Lastly, the officer considered the issue of her not having a Hukou. The Applicant submitted that her "presence as a person returning to China after years abroad will be reported to the Public Security Bureau responsible for the area where she would be residing, and [she] would be subjected to enforcement actions (including arrests, detention, and fines) for residing without a valid hukou." The officer found this submission to be speculative. The officer also rejected the paper prepared by the Research Directorate of the Immigration and Refugee Board from February 2005 titled "China: Reforms of the Household Registration System (Hukou) (1998-2004)" as having little probative value as it was written 15 years prior to the submission of the PRRA application and does not reference country conditions for returnees to China.

[19] The Applicant raises two issues. She submits that the decision is unreasonable because the officer failed to recognize that her experiences in China during her past visits was as a permanent resident of Canada, not as a returning refugee claimant. As such, her profile differs from that considered by the RPD in the cessation application. She also submits that the officer erred in failing to consider the cumulative impact of the four alleged risks that were considered, and especially that she was an elderly returnee with no Hukou and thus had no access to social

services. She also submits that the officer erred in failing to convene an oral hearing when the officer essentially disbelieved the Applicant.

[20] I shall address that last issue first. The officer did not disbelieve the Applicant. The officer in each case accepted that she believed she was at risk on the four stated grounds, but correctly noted that subjective fear of risk is not the test. The assessment must be made based on the evidence establishing that alleged risk.

[21] In that regard, the officer examined what had occurred to the Applicant each time she returned to China in the previous years as the best evidence of what would likely happen this time. There is no error in using the evidence in the real world to assess what is likely to happen in a future world.

[22] The Applicant submits that the officer failed to assess the evidence cumulatively:

> When considering whether a claim is well founded, the Tribunal must consider the person's profile and determine whether or not based on that profile, the person faces more than a mere possibility of persecution. Thus, in circumstances where the evidence suggests that a person with a specific profile will be at risk of persecution, the Tribunal must consider the totality of the evidence and must consider whether, based on all of the factors taken cumulatively, the claimant meets the profile and will be at risk. Failure to consider all of the factors globally will result in a reviewable error.

[23] With the greatest of respect to counsel for the applicant, the authorities he cites are unhelpful. In *Boroumand v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1219, the decision maker failed to consider one of the risk allegations. In *B027 v Canada (Minister of*

Citizenship and Immigration), 2013 FC 485, the decision-maker appears to have found no risk in Sri Lanka as Canada had accepted that the applicants were not LTTE supporters. The reference to having to look at allegations cumulatively is made in that context.

[24] I agree that an officer should examine the risks in a cumulative manner when appropriate. It is appropriate to do so when some factors point to no risk and others point to some risk. Here, the officer found that none of the risks identified pointed to any risk to the Applicant based on her re-availment to China over many years. I also agree with the Respondent that while she points to the hardships she may face not having a Hukou, she never asserts that she cannot get one if she applies for it.

[25] Lastly, counsel for the Applicant noted the number of occasions when the officer stated that the decision reached was made on the balance of probabilities, when the test is a "mere risk" of harm. It was suggested that the officer applied the wrong test. I do not accept that submission.

[26] While the wording could have been better, it is clear to the Court that the officer was simply stating that he weighed the evidence to see whether on the balance of probabilities the alleged risk had been made out. That the proper test was used is evident from the conclusion of the decision where the officer writes:

> Having reviewed the applicant's submissions, I find that the applicant faces no more than a mere possibility of persecution based on any of the *Convention* grounds if returned to her country of nationality. Further, I find that there is insufficient evidence before me to conclude she is more likely than not to face a risk to life, of cruel and unusual treatment or punishment, or a danger of

> torture in his country of return. I find that the applicant is neither a *Convention* refugee nor a person in need of protection as defined by either section 96 or section 97 of IRPA.

[27] No question was posed for certification.

JUDGMENT in IMM-1624-21

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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