

Federal Court



Cour fédérale

Date: 20230713

Docket: IMM-1858-22

Citation: 2023 FC 957

Ottawa, Ontario, July 13, 2023

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

JUNJIE LI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of the decision of a Pre-Removal Risk Assessment Officer (the “Officer”), dated December 10, 2021 (the “Decision”), rejecting the Applicant’s Pre-Removal Risk Assessment (“PRRA”) application.

II. Background

[2] The Applicant, Junjie Li, is a 29-year-old citizen of China. On June 20, 2016, he entered Canada with his father and submitted a refugee claim. The Applicant's father was the principal refugee claimant.

[3] On September 30, 2016, the Refugee Protection Division of the Immigration and Refugee Board of Canada (the "RPD") heard the Applicant and his father's refugee claim. The refugee claim was based on persecution by the Chinese authorities against the Applicant and his father's religion because they were followers of the outlawed Church of Almighty God. On November 24, 2016, the RPD issued its decision refusing the claim. The RPD concluded that the claim and the Applicant lacked credibility. The RPD made the following findings:

- A. The Applicant's father's testimony about how they exited from China was implausible. Had the Applicant and his father been flagged by Chinese authorities as followers of the Church of Almighty God, they would have been identified by airport officials given China's Golden Shield database. This undermined the claim that they were followers of the Church of Almighty God who are wanted by Chinese authorities.
- B. The supporting evidence was of little weight and some of it was fraudulent.
- C. The Applicant's father's profile as presented in his Canadian Temporary Resident Visa ("TRV") application was inconsistent with the personal information in his

Basis of Claim form. The TRV did not mention the Applicant's father's second wife and there was no reasonable explanation for this. This undermined the father's claim that he was driven to join the Church of Almighty God following the death of his first wife.

- D. The Applicant and his father's knowledge of the teachings of the Church of Almighty God was limited and rudimentary.
- E. There was insufficient evidence to establish a *sur place* claim. While the Applicant and his father presented evidence of attending church meetings in Canada, there was insufficient evidence to show that Chinese authorities were aware of this.

[4] The Applicant appealed the RPD's decision to the Refugee Appeal Division (the "RAD") and on April 19, 2017, the RAD dismissed the Applicant's appeal upholding the RPD's reasoning.

[5] As a result, an enforceable removal order was issued against the Applicant. On July 19, 2017, the Applicant's father passed away. Five months later, in December 2017, the Applicant claims to have learned from his step-mother that Chinese authorities had come to her home twice asking about him and his father, and accusing them of engaging in Church of Almighty God religious activities in Canada.

[6] In April 2021, the Applicant submitted the PRRA application. As part of the application, the Applicant included evidence purporting to show that he continues to meet with his local

Church of Almighty God group in Markham, Ontario regularly and a purported letter from his step-mother stating that Chinese authorities are looking for the Applicant because of his religious beliefs. The Applicant also disclosed up to date country documents in an effort to show that there has been a deterioration in religious freedom in China, and that adherents of the Church of Almighty God are at serious risk of arrest, detention, and abuse by Chinese authorities.

III. Decision under Review

[7] On December 10, 2021, the Officer denied the Applicant's PRRA application. The Officer did not hold an oral hearing.

[8] The Officer made the following relevant determinations:

- A. A PRRA officer must respect the determinations of the RPD and the RAD. After the dismissal of a refugee claim by the RPD or the RAD, new evidence can only be submitted if it meets the newness criteria under paragraph 113(a) of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]*.
- B. The letter from the Applicant's step-mother offered in support of the Applicant's *sur place* claim is of minimal probative value. The certificate of translation did not include a registered member number for the translation. Also, the RPD was not satisfied that the Applicant's step-mother actually exists and the Applicant did not offer any evidence to establish that she did. The letter is also predicated on the

Applicant's religious identity as a member of the Church of Almighty God, which the RPD did not find credible.

- C. Likewise, evidence of the Applicant's attendance at the Church of Almighty God was worth little weight. Evidence of this nature was already before the RPD when it made its determinations.
- D. Country condition documents do establish that Church of Almighty God followers in China face conditions that may amount to religious persecution, however, the RPD had determined that the Applicant's claim that he was a member of the Church of Almighty God lacked credibility and therefore failed to establish he would face a serious possibility of persecution.

IV. Issues

- A. *Did the Officer err by failing to hold an oral hearing?*
- B. *Did the Officer err in assessing the Applicant's fresh evidence?*

V. Standard of Review

[9] The standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25 [*Vavilov*]).

VI. Analysis

A. *Did the Officer err by failing to hold an oral hearing?*

[10] Paragraph 113(b) of the *IRPA* provides that an oral hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required. Section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*] sets out the prescribed factors:

167 For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following:

(a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;

(b) whether the evidence is central to the decision with respect to the application for protection; and

(c) whether the evidence, if accepted, would justify allowing the application for protection.

167 Pour l'application de l'alinéa 113b) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise :

a) l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur;

b) l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;

c) la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

[11] The Applicant argues that an oral hearing was required because the Officer made determinations about the Applicant's credibility based on his evidence.

[12] I agree with the Applicant. The evidence in this case engages all three of the prescribed factors of section 167 of the *IRPR*.

[13] It is often difficult to distinguish between a finding of insufficient evidence and a negative credibility determination. Here, however, the Officer did not believe the Applicant's new evidence and central claims that he was a genuine member and adherent of the Church of Almighty God and that he was being pursued by Chinese authorities. This raised serious issues of credibility that were central to the PRRA application.

[14] While the Officer was entitled to rely on the RPD's credibility findings in light of the evidence before it, the Applicant's new evidence and attempts raised fresh credibility concerns with respect to which the Officer in the Decision implicitly made fresh determinations without holding an oral hearing (*Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at para 13). The Officer did not believe that the Applicant's step-mother existed, implying that the letter purportedly provided by the Applicant may be fraudulent. Furthermore, the Officer maintained that the Applicant was not a genuine adherent of the Church of Almighty God faith, despite evidence that the Applicant had continued to attend church in Canada. Both of these determinations imply the Officer found the Applicant's evidence and the Applicant to lack credibility.

[15] While it is open to the Officer to make such determinations after holding an oral hearing, allowing for the Applicant to address the Officer's concerns, it was unreasonable for the Officer to decide not to hold an oral hearing at all.

B. *Did the Officer err in assessing the Applicant's fresh evidence?*

[16] Having concluded that an oral hearing was required, the question of reasonableness in assessing the Applicant's fresh evidence should be considered following an oral hearing.

VII. Conclusion

[17] The application is allowed.

JUDGMENT in IMM-1858-22

THIS COURT'S JUDGMENT is that:

1. The application is allowed and the matter referred to a different officer for reconsideration after an oral hearing.
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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