

Federal Court



Cour fédérale

Date: 20240205

Docket: IMM-7163-22

Citation: 2024 FC 185

Calgary, Alberta, February 5, 2024

PRESENT: Madam Justice Go

BETWEEN:

Ying Deng LIN

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Ying Deng Lin [Applicant] is a 59-year-old citizen of China. Fearing persecution from government authorities due to his membership in a house church, he arrived in Canada in 2007 and initiated a refugee claim. The Applicant was granted refugee status on April 6, 2009 and became a permanent resident on November 18, 2020. The Applicant started a clothing

manufacturing business in Canada and his business employs about 60 employees, including some non-English-speaking immigrant women.

[2] On August 27, 2021, the Refugee Protection Division [RPD] granted a cessation application lodged by the Minister of Immigration, Refugees and Citizenship Canada, finding the Applicant had reavailed himself to China because he traveled back to China eight times between April 2010 and November 2019. The Applicant filed an application for permanent residence on humanitarian and compassionate [H&C] grounds in September 2021, which focused on his establishment in Canada and the hardships he would face if he returns. The Applicant also requested that a Temporary Resident Permit [TRP] be considered if the H&C application was denied.

[3] A Senior Immigration Officer [Officer] assigned to the Applicant's H&C case denied the H&C application on July 14, 2022 but did not consider the TRP request [Decision]. This Decision is before the Court for judicial review.

[4] For further reasons set out below, I am granting this application and returning the matter back for two purposes: first, to render a decision on the Applicant's request for a TRP, and second, to reconsider the Applicant's H&C application.

II. Issues and Standard of Review

[5] The Applicant argues the Officer breached procedural fairness by failing to consider his request for a TRP, in the alternative, if his H&C application is denied.

[6] The Respondent agrees that the TRP request should be remitted back and be determined in accordance with the law. As such, I will issue an order to that effect.

[7] The Applicant also submits the Decision was unreasonable on three grounds:

- a. The Officer unreasonably found that the Applicant could either “transfer” his Canadian factory to someone else or “continue the business long distance;”
- b. The Officer unreasonably found that the Applicant’s employees would be able to find work in “the vibrant Chinese community that exists in Toronto;” and
- c. The Officer unreasonably found that the Applicant can practice his religion in China and integrate into Christian communities in China.

[8] With respect to the merits of the Decision, the parties agree that it should be reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[9] A reasonable decision “is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85). The onus is on the Applicant to demonstrate that the decision is unreasonable (*Vavilov* at para 100). To set aside a decision on this basis, “the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100).

III. Analysis

[10] With respect to the H&C application, I find the Officer erred in their analysis of the hardships faced by the Applicant as a Christian in China.

[11] The Applicant submitted an affidavit in his H&C application [H&C affidavit] in which he stated that he has been attending church services at Living Stone Assembly in Canada since April 15, 2007, and was baptised in December 2007. The Applicant also described his involvement at Living Stone Assembly including making donations, attending Bible classes and Sunday services, and volunteering in various ways.

[12] The Applicant further stated in the H&C affidavit that he would face hardship as a Christian upon return to China, noting he would not be able to practice his religion freely in China as Chinese officials “continue to close Christian churches and restrict religious activity online and in-person.” In their H&C submissions, counsel for the Applicant cited objective evidence concerning the persecution members of house churches continue to face in China.

[13] The Applicant submits it was unreasonable for the Officer to conclude that he would be able to continue practicing his religion and integrate in the Christian community in China, noting that he was granted refugee protection based on persecution he faced because of his religion.

[14] The Applicant also submits that although he reavailed himself of protection by returning to China, during those visits, he remained in China for limited and temporary purposes, and

remained in his family home. I note however, these assertions were not included in the H&C affidavit or submissions.

[15] The Applicant also argues that the Officer wrongly addressed the Applicant's hardship in China through the lens of persecution, noting the Officer's criticism of the Applicant's failure to "counter" the RPD's findings of reavailment, and refusing to give any weight to the hardship that China's Public Security Bureau [PSB] will harm him upon his return to China.

[16] At the hearing, counsel for the Applicant expanded on their argument about the wrong legal test by arguing that the Officer was conducting a risk assessment under section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27, as opposed to the hardship test for an H&C application. Counsel noted the Officer's acknowledgment that "many Christians in China are being discriminated against, harassed and arrested by state actors," which, counsel argued, would be sufficient to meet the hardship test.

[17] While I do not find all of the Applicant's arguments persuasive, I agree that the Officer's findings were unreasonable for two reasons: First, the Officer applied the wrong legal test. Second, the Officer failed to engage with the evidence provided by the Applicant.

[18] While the Officer did acknowledge the different legal tests for refugee protection versus an application on H&C grounds, the Officer relied on the RPD's finding on reavailment to find the Applicant would not face hardship, without accounting for the different legal tests. This was evident in the Officer's repeated comments about the Applicant not providing information or

evidence in the H&C application to “counter” the RPD findings in any way, and therefore the Officer did not give any weight to “hardship” that the PSB would harm him upon his return to China.

[19] The Officer also unreasonably required the Applicant to present evidence of personalized risk when they concluded as follows:

I acknowledge that many Christians in China are being discriminated against, harassed, and arrested by state actors. However, I note that these incidents primarily result in short-term detentions and that arrests principally occur when these individuals have gained the authorities’ attention due to their political or social activities. The country conditions demonstrate that the applicant can practice his religion and integrate into Christian communities in China. Further, I note that insufficient evidence was provided to indicate that the Chinese government is actively seeking the applicant. Therefore, I give this consideration little weight.

[20] The Respondent submits that the Officer considered the RPD decision appropriately and found that both legal standards assess the facts on a balance of probabilities. With respect, I disagree. Stating that there are two different tests and in fact applying them appropriately are two different matters.

[21] At the hearing, the Respondent also pointed to the Response to Information Requests [RIR] dated October 10, 2014, indicating there is a variation in the treatment of unregistered religious groups by local authorities, and that according to some sources, a majority of unregistered churches are tolerated by the government. Based on the country conditions evidence showing a great span of treatment of Christians practising in house churches in China, and given the Applicant has not shown he was someone who would face restrictions in his practice, the

Respondent submitted the Officer's finding that the Applicant would not face hardship was reasonable.

[22] I reject the Respondent's submission for two reasons.

[23] First, after acknowledging that many Christians in China face discrimination and harassment, the Officer failed to consider whether such treatment would amount to hardship for the Applicant. Rather, the Officer required the Applicant to demonstrate that he would personally be at risk, contrary to this Court's jurisprudence confirming that an H&C applicant does not need to present direct evidence that they would face targeted risks. This can be inferred by the fact that an applicant is a member of a group that is being discriminated against: *Isesele v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 222 at para 16; *Kanakasingam v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 457 at para 20; and *Natesan v Canada (Immigration, Refugees and Citizenship)*, 2022 FC 540 at para 47.

[24] Second, I note that in the Decision, the Officer did not refer to the RIR the Respondent quoted. The Officer only cited one country conditions report, namely, the U.K. Home Office's Information package from 2019 regarding China's approach to Christianity to make their findings. I also note that the Decision failed to mention the country conditions reports the Applicant cited that point to China's ongoing efforts to shut down Christian churches, including evidence that China is assessed as being one of the top 20 countries where Christians face the most severe type of persecution. As such, I agree with the Applicant that the Officer did not engage with his evidence and arguments, which rendered the Officer's findings unreasonable.

IV. Conclusion

[25] The application for judicial review is granted.

[26] There is no question for certification.

JUDGMENT in IMM-7163-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the matter sent back for redetermination by a different officer to render a decision on the Applicant's request for a TRP, and to reconsider the Applicant's H&C application.
2. There is no question for certification.

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7163-22

STYLE OF CAUSE: YING DENG LIN v MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 10, 2024

JUDGMENT AND REASONS: GO J.

DATED: FEBRUARY 5, 2024

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