

Federal Court



Cour fédérale

Date: 20240320

Docket: IMM-9594-22

Citation: 2024 FC 445

Ottawa, Ontario, March 20, 2024

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

JI LIN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Mr. Ji Lin (the “Applicant”) seeks judicial review of the decision of the Immigration and Refugee Board, Refugee Appeal Division (the “RAD”), dismissing his appeal from a decision of the Immigration and Refugee Board, Refugee Protection Division (the “RPD”).

[2] The Applicant is a citizen of China. He alleged a fear of the Public Safety Bureau (the “PSB”), following the destruction of a house without compensation. Among other things, the RPD found that the Applicant failed to show a subjective fear of persecution.

[3] The RAD accepted certain documents presented by the Applicant as “new evidence”, within the scope of subsection 110(4) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”) but determined that the new evidence did not justify holding an oral hearing.

[4] The new evidence accepted by the RAD consisted of a letter from the Applicant’s brother, a medical report from his mother, a “Notice of Summons” from the PSB directing him to appear on April 12, 2022, a “Notice of Failure to Comply”, and WeChat communications with his brother. The RAD expressed credibility concerns about the two Notices and the letter from the Applicant’s brother. It accepted the medical report and the WeChat communications as credible.

[5] The RAD found that the Applicant failed to establish the subjective basis of his fear of persecution, noting in particular that he travelled from China to Thailand using his own genuine passport. He subsequently re-entered China using a fake passport, which the RAD determined further undermined his subjective fear of persecution.

[6] The Applicant then used his fake passport to travel from China to Canada.

[7] The Applicant argues that the RAD breached his right to procedural fairness by expecting him to rely on attachments to a “Response to Information Request” that is contained in the National Documentation Package. These attachments are in the Chinese language and the Applicant says that they were unavailable to him.

[8] The Applicant submits that the RAD unfairly relied on these attachments in assessing the credibility of the new evidence that he presented.

[9] The Applicant also contends that the RAD drew unreasonable inferences from his ability to exit and re-enter China.

[10] The Minister of Citizenship and Immigration (the “Respondent”) submits that there was no breach of procedural fairness resulting from the RAD’s reliance on attachments to the Response to Information Request since this information was reasonably available to the Applicant.

[11] The Respondent also argues that the RAD reasonably assessed all the evidence and that the Applicant’s present submissions amount to an invitation for the Court to reweigh the evidence, an exercise that is not permitted upon judicial review.

[12] Any issue of procedural fairness is reviewable upon the standard of correctness; see the decision in *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 (S.C.C.).

[13] Following the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.), the decision is reviewable on the standard of reasonableness.

[14] 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 the decision”; see *Vavilov, supra* at paragraph 99.

[15] I am not persuaded that the RAD breached procedural fairness in the way it assessed the new evidence presented by the Applicant. In the first place, I agree with the Respondent that the attachments to the Response to Information Request could have been found by the Applicant.

[16] Likewise, I am not persuaded that the RAD unfairly or unreasonably rejected some of the documents submitted by the Applicant as new evidence.

[17] I see no reviewable error in the manner in which the RAD treated the new evidence submitted by the Applicant.

[18] The RAD’s conclusion, about the lack of a subjective fear on the part of the Applicant, is reasonable, having regard to the evidence submitted about his travels.

[19] The RAD acknowledged the sophisticated and elaborate security system of the Chinese government in tracking the entry and exit of people to and from China. The RAD did not believe

the Applicant's explanation for his ability to leave and re-enter China if he were indeed a subject of interest to the PSB.

[20] I am satisfied that the decision meets the applicable standards of review and there is no basis for judicial intervention. The application for judicial review will be dismissed. There is no question for certification.

JUDGMENT IN IMM-9594-22

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question for certification.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9594-22

STYLE OF CAUSE: JI LIN v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 17, 2024

REASONS AND JUDGMENT: HENEGHAN J.

DATED: MARCH 20, 2024

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