

Federal Court



Cour fédérale

Date: 20240326

Docket: IMM-13568-22

Citation: 2024 FC 464

Vancouver, British Columbia, March 26, 2024

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

JIAKANG ZHANG

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Mr. Jiakang Zhang (the “Applicant”) seeks judicial review of the decision of the Immigration and Refugee Board, Refugee Appeal Division (the “RAD”). In that decision, the RAD confirmed the decision of the Immigration and Refugee Board, Refugee Protection Division (the “RPD”), finding that the Applicant is neither a Convention refugee nor a person in

need of protection, within the scope of section 96 and subsection 97(1), respectively, of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicant is a citizen of China. He sought protection on the basis of his fear of persecution as a practitioner of Falun Gong.

[3] The Applicant used a “snakehead” to obtain a visitor visa and entered Canada on November 4, 2018. He claimed protection on February 18, 2020, after hearing that his Falun Gong group had been raided by the Public Security Bureau (the “PSB”) and that the PSB had gone to his mother’s house in China, looking for him.

[4] The RPD found that the Applicant was not credible. The RAD confirmed the negative credibility findings made by the RPD.

[5] The Applicant raises many arguments about errors made by the RAD, including its finding that his delay in seeking protection in Canada undermined his subjective fear of persecution. He submits too that the RAD erred in noting the absence of corroborative evidence in making its negative credibility findings. He further argues that the RAD erred in determining that his activities in Canada would not put him at risk in China.

[6] The Minister of Citizenship and Immigration (the “Respondent”) argues that the RAD reasonably concluded that the Applicant lacked credibility due to his inconsistent testimony, that

it reasonably assessed the lack of corroborative evidence, and that the RAD reasonably assessed the evidence submitted.

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

[8] 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.

[9] Although the Applicant advances many arguments, ultimately they all amount to a challenge of the credibility findings made by the RAD.

[10] The RAD considered the basis of the Applicant’s claim, that is a fear of the PSB due to his practice of Falun Gong. It determined that the delay between his arrival in Canada and the time that he claimed protection, undermined the subjective basis of his claim.

[11] The decision of the Supreme Court of Canada in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 (S.C.C.) remains good law. A person seeking protection as a Convention refugee bears the burden of showing both a subjective and objective basis for that claim; see page 723.

[12] Although the RAD does not clearly spell out the effect of the lack of corroborative evidence upon the Applicant's credibility, this weakness does not render its decision unreasonable. As noted above, the Applicant bore the burden of establishing his claim with credible evidence.

[13] I see no reviewable error arising from the manner in which the RAD dealt with the documentary evidence, including photographs, submitted by the Applicant. This evidence, by itself, could not establish his claim. The RAD did not accept, as credible, the Applicant's evidence about his practice of Falun Gong in Canada because it did not accept his evidence about that practice in China.

[14] I agree with the submissions of the Respondent that the Applicant's arguments about the likelihood of coming to the attention of the Chinese authorities, while in Canada, amount to an invitation for the Court to reweigh the evidence. This is impermissible upon judicial review.

[15] In the result, upon considering the evidence before the RAD, and the written and oral submissions of the parties, I am satisfied that the decision under review meets the applicable legal standard. There is no basis for judicial intervention and the application for judicial review will be dismissed. There is no question for certification.

JUDGMENT IN IMM-13568-22

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-13568-22

STYLE OF CAUSE: JIAKANG ZHANG v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEO CONFERENCE

DATE OF HEARING: FEBRUARY 1, 2024

REASONS AND JUDGMENT: HENEGHAN J.

DATED: MARCH 26, 2024

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