Federal Court  Cour fédérale

Date: 20240717

Docket: IMM-5902-23

Citation: 2024 FC 1118

Toronto, Ontario, July 17, 2024

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

NGOC HAN TRAN
GIA DINH LY
THIEN VU LY

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicants are citizens of Vietnam and members of the Hoa Hao religious movement. They sought refugee protection in Canada based on a fear of persecution related to their religious practice. In a first-level decision, the Refugee Protection Division [RPD] of the Immigration and Refugee Board rejected the Applicants' claims. On appeal, the Refugee Appeal

Division [RAD] found that the RPD had correctly dismissed the Applicants' claims for refugee protection. The Applicants seek judicial review of this decision.

[2] For the reasons that follow, I dismiss this application for judicial review. I find that, while the RAD's reasons for dismissing the Applicants' appeal were not perfect, they were reasonable.

II. BACKGROUND

A. *Facts*

[3] Ngoc Han Tran is the Principal Applicant [PA] in this matter. Her spouse, Gia Dinh Ly [the Associate Applicant, or "AA"] and their son, Thien Vu Ly [the Minor Applicant, or "MA"] also assert a fear of persecution in Vietnam because of their Hoa Hao practice.

[4] The PA became involved in Hoa Hao after her grandfather, who raised her, passed away from cancer in January 2017. Her aunt, Kim Chung, introduced her to the religion, to help improve the PA's mental health. The PA became interested in the faith and continued to learn about it from her aunt. Kim warned the PA to be cautious, as the religion was not permitted by the government in Vietnam.

[5] In February 2017, the PA began attending a house temple with her aunt. Soon after, the AA began to attend as well.

[6] In June 2017, the PA came to Canada to take her son to school in Saskatoon. The AA came to Canada in October 2017 to visit the son. After the MA finished school in Saskatoon in 2018, the family returned to Vietnam.

[7] In February 2019, the family came to Toronto to visit and care for the PA's aunt. While in Toronto, they found a temple and introduced the MA to Hoa Hao practice.

[8] In April 2019, the PA allegedly learned from her aunt in Vietnam that their house temple had been destroyed, and that some of the congregation members were arrested and detained for a week. The PA claims that her aunt was among those arrested, although she was released immediately. The PA further alleges that because of the arrest of her congregation, the police learned that she was attending Hoa Hao practices in Canada. The PA finally alleges that the police visited her mother, asking about her whereabouts and stating that she should report for questioning when she returned, and that the police continue to visit her mother at regular intervals.

[9] As a result, the Applicants made a claim for refugee status on August 18, 2020. Their application was rejected by the RPD. The RPD determined that the PA and the AA were genuine practitioners, but that the MA was not. It concluded that the PA and AA could practice their faith freely in Vietnam, so long as they did not speak out against the government. While the RPD accepted that the PA and AA were genuine Hoa Hao followers, it made a number of negative credibility findings that led it to conclude that the PA was not wanted by the police. These findings related to: i) an omission from the PA's Basis of Claim [BOC] form narrative that her mother's aunt had been murdered because of her faith; ii) inconsistent evidence about whether

the PA's aunt had been arrested; and iii) evolving testimony about the seizure of the aunt's cell phone in Vietnam.

B. *Decision under Review*

[10] The RAD affirmed the RPD's decision that the Applicants are neither convention refugees nor persons in need of protection. Unlike the RPD, the RAD accepted that the Minor Applicant was a genuine Hoa Hao practitioner. Nevertheless, the RAD concluded that the appeals of all of the Applicants should be dismissed because the RPD had correctly found that the Applicants could practice their faith freely in Vietnam. While noting some errors in the RPD analysis, the RAD also affirmed the RPD's findings that the Applicants were not wanted by the police in Vietnam.

[11] Finally, the RAD determined that the Applicants do not have a basis for a *sur place* claim: there was no evidence in the record that the Applicants' religious activities in Canada have come to the attention of the Vietnamese authorities, and the objective evidence indicates that Hoa Hao practitioners returning to Vietnam would not be at risk from the police.

III. ISSUES

[12] In their Memorandum of Argument, and in their Further Memorandum of Argument, the Applicants raise the following issues:

A. Did the RAD err in finding that the Applicants had not credibly established that they are wanted by the Vietnamese police?

B. Did the RAD err in its assessment of religious persecution?

C. Did the RAD err by overlooking the public aspects of the Applicants' religious practice to conclude that concealing their practice would not amount to religious persecution?

D. Did the RAD err in failing to consider the Applicants' perceived political opinions and assess their risk based on intersecting grounds?

E. Did the RAD err by relying on irrelevant considerations when assessing the Applicants' risk of religious persecution?

[13] In assessing the overall reasonableness of the RAD's decision, I would distill the above issues down to the following:

A. Were the RAD's credibility findings reasonable?

B. Was the RAD's assessment of risk, on the basis of the Applicants' religious identity, reasonable?

IV. STANDARD OF REVIEW

[14] The parties agree, as do I, that the standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 23. A reasonable decision displays justification, transparency and intelligibility, with a focus on both the decision made and the reasons for it: *Vavilov* at para 15. To do so, a decision must be based on an "internally coherent and rational chain of analysis and that is justified in relation to that facts and law that constrain a decision-maker" *(Vavilov* at para 85).

V. ANALYSIS

A. *It was reasonable for the Member to conclude that the Applicants are not wanted by police in Vietnam*

[15] The RAD Member concluded, as had the RPD, that inconsistencies, omissions, and shifting statements emerged from the PA's testimony, all of which called into question whether the Applicants were wanted by the police, as they had claimed. The Applicants argue that the RAD's findings in this regard were unreasonable. I disagree.

[16] The Applicants do not contest that inconsistencies arose over the course of the RPD hearing, but seek to provide explanations for them, and argue that the RAD's failure to adopt these explanations was unreasonable. Notwithstanding these explanations, I conclude that the negative inferences drawn by the RAD were reasonably open to it. The RAD accurately rooted its credibility concerns in the inconsistencies that arose over the course of the RPD proceedings.

[17] These inconsistencies were internal to the Applicants' own evidence, and they were closely connected to the claim that the Applicants were wanted by the police. The RAD adequately and logically explained why these concerns undermined this aspect of the Applicants' claim. As a result, I see no reviewable error in the RAD's conclusion that the Applicants had failed to establish that they are wanted by police in Vietnam due to their Hoa Hao faith.

B. *The RAD's Assessment of Risk*

[18] As noted above, the RAD affirmed the RPD's findings that the Applicants can safely return to Vietnam, and freely practice their faith without fear of persecution. In arriving at this

conclusion, the RAD noted that Hoa Hao Buddhism has a significant following in Vietnam, and is the third most popular religion in the country.

[19] The RAD acknowledged that the ruling Vietnamese Communist Party [VCP] does impede some Hoa Hao activities, but concluded it is only members of unregistered groups, who are also politically active, who are subject to harassment and mistreatment. Essentially, the RAD found that the VCP engages in political repression of certain members of religious groups, but does not repress adherents of such groups on the sole basis of their religious practice. Given the Applicants' testimony that they had never engaged in any kind of political activity, the RAD concluded that they did not belong to the cohort of Hoa Hao followers who may face persecutory treatment.

[20] The finding that Hoa Hao followers can practice their faith freely in an unregistered house temple in Vietnam, as long as they do not engage in political activity has been upheld in other recent matters that have come before this Court.

[21] Most recently in *Hoang v Canada (Citizenship and Immigration)*, 2024 FC 1003 [*Hoang I*], my colleague Justice Battista found, as I do here, that the RAD had reasonably appraised the somewhat mixed documentary evidence in the record. Justice Battista noted (at para 10):

> Despite counsel for the Applicant's able arguments on this point, it is my view that the RAD dealt with country condition documentary evidence reasonably. It acknowledged the mixed nature of the documentary evidence, and it calibrated the risk faced by Hoa Hao practitioners using clear criteria that had support in the documentary evidence. That criteria included the level of political activity practiced by Hoa Hao practitioners, the place of residence of Hoa Hao practitioners, the degree to which their religious

> practice is public, in addition to the type of Hoa Hao sect to which practitioners belong.

[22] Similarly, in *Vu v Canada (Citizenship and Immigration)*, 2024 FC 430, my colleague Justice O'Reilly found that the RAD, in that case, had weighed the relevant evidence showing that religious persecution in Vietnam is confined to those who engage in political activities. Given that the applicant was not involved in any political activity, the Court found the RAD's rejection of the applicant's appeal to be reasonable. Justice O'Reilly concluded (at para 14):

> The RAD was alert to the limitations on religious freedom in Vietnam and considered the bulk of the documentary evidence available to it. The preponderance of that evidence showed that the risk of persecution fell mainly on religious actors who pursued political goals. Therefore, the RAD's conclusion, that the risk faced by Mr. Vu was no more than a mere possibility, was not unreasonable in the circumstances.

[23] In *Nguyen v Canada (Citizenship and Immigration)*, 2024 FC 165, my colleague Justice Kane dismissed an application for judicial review, though in that case I note that the applicant had failed to establish that she was a genuine Hoa Hao follower, and had not claimed to be part of an independent Hoa Hao group.

[24] Finally, in *Hoang v Canada (Citizenship and Immigration)*, 2024 FC 116 [*Hoang II*], this Court dismissed an application for judicial review of a RAD decision that bears many similarities to the present application. In doing so, my colleague Justice Manson stated (at paras. 25-26):

> [T]he Applicants argue that the RAD's findings suggest that the Principal Applicant would be safe from persecution if her practice remains private and non-political. In effect, the Applicants' position is that the RAD denied the Principal Applicant's claim because she would be able to accommodate the restrictions imposed by Vietnamese authorities by limiting or contorting her religious practice to those restrictions.

> The Applicants' argument misconstrues the RAD's finding. In fact, the RAD arrived at the opposite conclusion, namely that the Principal Applicant would not have to change her religious practice, given that her practice was, and remains, inherently private and non-political. By her own admission, the Principal Applicant's practice is constrained to her home, and she has not participated in religious gatherings outside of small and private groups in her local area in Vietnam, aside from the November 2018 event.

[25] As in *Hoang I* and *II*, the RAD in this case found that the Applicants would have no need to alter or constrain their religious practice in Vietnam, given that their personal practice has been limited to small gatherings, and has never included political activity. Given the similarity between these cases, I come to the same conclusion in this application for judicial review. In doing so, however, I do wish to elaborate briefly on the analysis through which I have arrived at this determination.

[26] Freedom of religion is one of the core pillars of liberal democracies. It is protected at subsection 2(a) of the *Canadian Charter of Rights and Freedoms*, and in the refugee protection context, it is specifically enumerated as a ground of protection under the *Refugee Convention*. For many years, the Supreme Court of Canada has articulated an expansive definition of freedom of conscience and religion, which "revolves around the notion of personal choice and individual autonomy": *Syndicat Northcrest v Amselem*, 2004 SCC 47 at para 40 [*Amselem*]. In *Amselem*, the Supreme Court went on to define freedom of religion in the following terms (at para 46):

> Freedom of religion consists of the freedom to undertake practices and harbour beliefs, having a nexus with religion, in which an individual demonstrates he or she sincerely believes or is sincerely undertaking in order to connect with the divine or as a function of his or her spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials.

[27] Moreover, freedom of religion is closely connected with the other fundamental freedoms set out at section 2 of the *Charter*, those being freedom of thought, opinion and expression; freedom of peaceful assembly; and freedom of association.

[28] At the same time, limitations on these freedoms are not necessarily tantamount to persecution in the refugee context. Firstly, the Canadian *Charter* itself recognizes that such freedoms may be subject to reasonable limits prescribed by law, provided they can be "demonstrably justified in a free and democratic society." Second, even where state action may infringe these freedoms, this does not necessarily equate to persecutory treatment.

[29] I refer to the *Charter* and to Canadian jurisprudence on freedom of religion not for the sake of engaging in a constitutional analysis of the decision under review, but to give context to how, I believe, Canadian courts should consider freedom of religion cases as they arise in the refugee determination context.

[30] Here, the Applicants submit that the RAD improperly applied the legal test for whether they face religious persecution. The Applicants argue that the limitations and discrimination that they face as Hoa Hao practitioners amount to religious persecution, because they impede their ability to practice freely and openly in Vietnam. The Applicants cite *Zhang v Canada (Citizenship and Immigration)*, 2009 FC 1198 at paras 19-20 [*Zhang*], wherein the Honourable Mr. Justice de Montigny (as he then was) held that:

> The case law makes it quite clear that any meaningful restriction on the applicant's ability to practice her religion as she wished in her house church, including a brief period of detention or a fine, would most certainly constitute religious

> persecution. The fact that it is illegal to belong to an unregistered or non state sponsored church in China would therefore tend to support a finding of religious persecution.

[31] Justice de Montigny also held, in *Zhou v. Canada (Citizenship and Immigration)*, 2009 FC 1210 at para 29 [*Zhou*], "[i]f one has to hide and take precautions not to be seen when practising his or her religion, at the risk of being harassed, arrested and convicted, I do not see how he or she can be said to be free from persecution". In support of that proposition, Justice de Montigny cited from *Fosu v Canada (Minister of Employment and Immigration)* (1994), 90 F.T.R. 182, [1994] F.C.J. No. 1813 at para 5 [*Fosu*]:

> The fact is that the right to freedom of religion also includes the freedom to demonstrate one's religion or belief in public or in private by teaching, practice, worship and the performance of rites. As a corollary to this statement, it seems that persecution of the practice of religion can take various forms, such as a prohibition on worshipping in public or private, giving or receiving religious instruction or, the implementation of serious discriminatory policies against persons on account of the practice of their religion. In the case at bar I feel that the prohibition made against Jehovah's Witnesses meeting to practise their religion could amount to persecution. That is precisely what the Refugee Division had to analyze.

[32] In more recent jurisprudence, this Court has emphasized that the "freely and openly" standard requires a consideration as to whether refugee claimants have been subjectively constrained from practicing their religion in the manner that they choose. In *Yang v Canada (Citizenship and Immigration)*, 2015 FC 650 [*Yang*], the Honourable Madam Justice Simpson concluded that the applicants, who were Chinese Roman Catholics, were able to practice in an

underground church – and that did not constitute a violation of the ‘freely and openly’ standard. She held that the above decisions by Justice de Montigny were primarily concerned with restrictions on public dimensions of worship.

[33] In *Yang*, the applicant had not testified that his religious practice was constrained by worshipping with others in private and there was no evidence of an “essential public dimension to his religion.” As such, Justice Simpson concluded that worshipping in an underground church in this context constituted worshipping freely, as “there was no suggestion in the evidence that attending a house church meant that the Applicant was prevented from worshipping according to the dictates and tenets of his religion”: *Yang* at paras 22 and 27.

[34] Several recent decisions of this court have followed this approach, see for example: *Yu v. Canada (Citizenship and Immigration)*, 2021 FC 625*; Nguyen v Canada (Citizenship and Immigration)*, 2024 FC 511; *Song v. Canada (Citizenship and Immigration)*, 2018 FC 449.

[35] Taking the above into consideration, I would first state that decision-makers must be extremely cautious in considering cases where the evidence suggests that religious congregants can avoid persecutory treatment only by refraining from certain aspects of their religious practice, *or* by repressing other fundamental freedoms. In this case, for example, the RAD quite explicitly acknowledged that Hoa Hao practitioners who are also politically active may be at risk of state-sponsored mistreatment.

[36] It is also important to consider here the nature of the political expression at issue: the references in the evidence to Hoa Hao political activity that may attract repression related

exclusively to advocacy for Hoa Hao religious freedom in Vietnam. In this sense, freedom of religion is closely connected to other fundamental freedoms, including freedom of thought, belief, opinion and expression; freedom of peaceful assembly; and freedom of association. For many Hoa Hao supporters, then, political engagement may be seen as a function of their faith, per *Amselem*.

[37] In applying the above considerations to the decision under review, I return to the RAD's treatment of the Applicants' testimony. First, the RAD found that the Applicants had no political profile to speak of – they had not participated in any Hoa Hao activity beyond their spiritual practice in their homes or in small groups. This finding was reasonable, as it was firmly rooted in the Applicants' testimony before the RPD.

[38] When specifically asked if the Applicants had taken part in political activity, they indicated that they had not because of the MA's age. The Applicants were not asked about whether they could freely practice their faith within their homes or small congregations, nor whether they would ever want to engage in public advocacy on behalf of the Hoa Hao. The PA did indicate in her BOC narrative that the atmosphere within their congregation was "divine," and in her testimony she indicated that she would not want to join a registered Hoa Hao group. While the latter statement could be characterized as a political view, the RAD found, based on the evidence, that the mere act of participating in an unregistered group was not sufficient to establish a well-founded fear of persecution. Based on the evidence before the RAD, this conclusion was reasonable.

[39] When assessed globally, based on the limited evidence that was before it and the credibility findings that I have discussed above, I conclude that the RAD reasonably found that the Applicants could practice their religion in the manner that they desired – namely, on their own or in small groups dedicated to religious practice. As Justice Manson found in *Hoang II*, the evidence before the RAD supported the finding that the Applicants would not face risk in Vietnam if they practiced their religion as they themselves described was their choice. To again borrow language from *Amselem*, the Applicants in this case appear to have the "freedom to undertake practices and harbour beliefs" in precisely the way that they have chosen to date. It follows that the RAD decision denying the Applicants' appeal was reasonable.

VI. CONCLUSION

[40] As a result of the above, I conclude that the RAD's decision was reasonable, and I therefore dismiss this application for judicial review. No question of general importance was proposed and I agree none exists.

JUDGMENT in IMM-5902-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question is certified for appeal.

"Angus G. Grant"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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