

Federal Court



Cour fédérale

Date: 20240307

Docket: IMM-13086-22

Citation: 2024 FC 385

Ottawa, Ontario, March 7, 2024

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

YIPING YANG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision (the “Decision”) by the Refugee Appeal Division (the “RAD”). The Decision confirmed the Refugee Protection Division’s (the “RPD”) finding that the Applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the “Act”).

II. Preliminary Matter

[2] The Applicant names the “Minister of Immigration, Refugees and Citizenship Canada” as the responding party. The Respondent should be the Minister of Citizenship and Immigration. The style of cause is hereby amended accordingly.

III. Background

[3] Ms. Yiping Yang (the “Applicant”) is a 64-year-old citizen of China.

[4] The Applicant entered Canada in December 2017 to visit her daughter and grandchild, both of whom are Canadian citizens. The Applicant’s daughter was formerly married to the Applicant’s son-in-law, but the couple had divorced by the time of her visit.

[5] While the Applicant was in Canada, the Applicant’s son-in-law was arrested in China in February 2018 on allegations of forging documents and endangering national security.

[6] A few days after his arrest, the Applicant’s son-in-law contacted the Applicant’s husband briefly by phone. The Applicant alleges that the Chinese authorities confiscated her husband’s phone, laptop, and passport and detained him for questioning. The Applicant’s husband was released a month later on bail in March 2018. In March 2019, the bail conditions were discontinued. The husband’s passport was later returned in May 2019.

[7] The Applicant's husband attempted to leave China for Canada in September 2019 through Guangzhuo airport. He was denied exit. A few days later he travelled to another province and attempted to exit China through Kunming airport.

[8] The Applicant claimed refugee protection in April 2018, less than two months after her husband was first arrested. She argued that the arrests were politically motivated and that she feared she would be targeted by the Chinese authorities for her connection with her son-in-law, as her husband was.

[9] In support of her claim, the Applicant submitted a copy of a document titled "Bail Release", which the Applicant alleges shows that her husband was arrested (the "Release Document"). The Release Document was submitted prior to the first day of the RPD hearing. The RPD questioned the authenticity of the Release Document during the first hearing day for a number of reasons, including the document's failure to list key features such as the bail conditions imposed on her husband.

[10] Before the second hearing day commenced several weeks later, the Applicant submitted a copy of a new document titled "Notice of Obligations to Persons on Bail Pending Trial" (the "Obligations Document", and collectively with the Release Document, the "Bail Documents"). The Obligations Document details the bail conditions that were purportedly imposed on the Applicant's husband once he was released from detention in March 2018.

[11] At no point did the Applicant provide the RPD with the original Bail Documents.

A. *The RPD Decision*

[12] The RPD denied the Applicant's claim. It held on a balance of probabilities that the Applicant's allegations were not credible, finding that the Bail Documents were fraudulent. The RPD noted that the Applicant was not able to provide originals of the Bail Documents and was inconsistent as to how she received the copies that were in her possession. The RPD also observed that the substance of the documents was inconsistent and cited the wrong laws. It also held that the Applicant's evidence as to why the Obligations Document was not filed before the first hearing was convoluted and inconsistent.

[13] In addition, the RPD determined that the Applicant's submission that her husband was able to leave China was inconsistent and was contrary to the country evidence. The country evidence indicated that the Chinese government maintained a national network called the Golden Shield Project, which allowed for the sharing of information about those subject to exit prohibitions. The RPD was not convinced by the Applicant's submissions that her husband was able to leave China by simply going to an international airport in a different province.

[14] The key issue relates to the RPD's comments with respect to its procedural obligations in light of its findings of inconsistency regarding the Bail Documents. The RPD did not put it to the Applicant that her evidence was inconsistent on that subject during the hearing, so as to allow her an opportunity to respond. Nor did the RPD request submissions post-hearing. The RPD acknowledged its obligation to put those issues to the Applicant, but noted that decision makers

are not required to do so in every case. The RPD further observed that it was clear to the Applicant that the consistency of her evidence was at issue, even if this was not stated explicitly.

B. *The RAD Decision*

[15] The Applicant appealed the RPD's findings to the RAD. Her appeal alleged in part that the RPD breached its duty of procedural fairness. The RAD found that the determinative issue was the Applicant's forward-facing risk, and denied the appeal.

[16] The RAD agreed with the Applicant that the RPD "misled" her as to the consistency of her statements regarding the Bail Documents. The RAD further noted that the RPD failed to request further submissions post-hearing on the issue of credibility. The RAD characterized the RPD's conduct as a procedural breach.

[17] However, the RAD also concluded that the RPD's breach was not fatal to the final determination of the refugee claim. The RAD cited the other factors in respect of which the RPD found inconsistencies, such as the husband's purported exit from China. The RAD also observed that the RPD had made findings in the alternatives – specifically that, even if her "husband was arrested, detained, and released on bail, this is insufficient, in and of itself, to support a finding that the [Applicant] is also at risk of being arrested". Since the determinative issue was the Applicant's forward-facing risk, the RAD's finding in that respect disposed of her claim.

[18] Notwithstanding the above determination, the RAD went on to assess the RPD's analysis of the Bail Documents. It found that the Applicant's position that the RPD erred had merit, but

that it was not ultimately determinative. The RAD concluded that even if it were to put significant weight on these documents, it still would not find that the Applicant herself would be at risk of persecution or harm should she return to China.

[19] The Applicant argues that the RAD erred by not sending the matter to the RPD for reconsideration despite finding that the RPD breached its duty of procedural fairness.

IV. Issues

[20] Did the RAD err by not sending the matter for reconsideration at the RPD despite its finding that the RPD breached its duty of procedural fairness?

V. Analysis

[21] The Applicant does not challenge the RAD's procedures in the course of the appeal. Rather, she claims that the RPD breached its duty of procedural fairness and that the RAD's substantive engagement with that breach was in error. This Court has held that such a challenge is reviewable on a reasonableness standard (*Ibrahim v Canada (Citizenship and Immigration)*, 2020 FC 1148 at paras 12-18).

[22] I do not agree with the Applicant's position that the RAD was unreasonable in dismissing the appeal and declining to remit the matter to the RPD, despite its finding that the RPD breached procedural fairness.

[23] The RAD is entitled to make its own findings regarding an issue that is before it on appeal, which findings substitute those of the RPD (*Huruglica v Canada (Citizenship and Immigration)*, 2016 FCA 93 at para 103). The RAD examined the Applicant's submissions regarding the authenticity of the Bail Documents and found that they "have merit". By doing so, the RAD rectified the unfairness. This was a reasonable course of action.

[24] Moreover, it was unnecessary for the RAD to remit the Applicant's claim to the RPD when it (the RAD) found that the error has no bearing on the determinative issue. Instead, the RAD concluded that (1) the determinative issue on the claim is the Applicant's forward-facing risk, and (2) the evidence did not suggest that the Applicant would face such risk. The Applicant does not challenge those findings.

[25] The Applicant cites *Cardinal v Director of Kent Institution*, [1985] 2 SCR 643 [*Cardinal*]. The Applicant specifically relies on the Supreme Court of Canada's statement that "the denial of a right to a fair hearing must always render a decision invalid, whether or not it may appear to a reviewing court that the hearing would likely have resulted in a different decision".

[26] *Cardinal* is distinguishable from the case at bar. In *Cardinal*, the reviewing judge was examining the same decision that the applicants alleged was decided in a procedurally unfair manner. In the case at bar, the Court is not reviewing the RPD's decision, where the procedural breach arose. Rather, the Court is reviewing the decision of the RAD, and the Applicant makes no complaints as to the procedural fairness of the RAD's decision.

[27] Moreover, unlike the reviewing judge in *Cardinal*, the RAD has the authority to make its own findings and determinations. Section 111(b) of the Act is explicit that the RAD may “set aside the determination [of the RPD] and substitute a determination that, in its opinion, should have been made”. In essence, the Applicant’s position is that the RAD must always remit a decision to the RPD whenever it finds that the RPD has breached its duty of procedural fairness. However, such a finding would unduly fetter the RAD’s authority and discretion as contemplated by legislation and by the case law.

[28] The RAD’s engagement with the RPD’s breach of procedural fairness was reasonable.

VI. Conclusion

[29] The application is dismissed.

JUDGMENT in IMM-13086-22

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended, naming the Minister of Citizenship and Immigration as the sole Respondent.
2. The application is dismissed.
3. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-13086-22

STYLE OF CAUSE: YIPING YANG v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 22, 2024

JUDGMENT AND REASONS: MANSON J.

DATED: MARCH 7, 2024

APPEARANCES:

Wennie Lee

FOR THE APPLICANT

Leila Jawando

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lee & Company
Barristers and Solicitors
Toronto, Ontario

FOR THE APPLICANT

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT