

Federal Court



Cour fédérale

**Date: 20240924**

**Docket: IMM-4460-23**

**Citation: 2024 FC 1502**

**Ottawa, Ontario, September 24, 2024**

**PRESENT: The Honourable Mr. Justice Southcott**

**BETWEEN:**

**HONG XIA LI, a.k.a. HONG YUN SUN and JUN  
FENG QU a.k.a. XING ZHE SUN**

**Applicants**

**and**

**THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] This is an application for judicial review of a decision by the Refugee Protection Division [RPD] dated March 21, 2023 [the Decision]. In the Decision, made under subsection 109(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], the RPD allowed an application by the Minister of Public Safety and Emergency Preparedness [the Minister] to

vacate a 2012 decision by the RPD, which had granted Convention refugee status to Hong Xia Li [the Principal Applicant] and her son, Jun Feng Qu [the Minor Applicant].

[2] As explained in further detail below, this application is dismissed, because the Applicants' arguments do not undermine the reasonableness of the Decision.

## II. Background

[3] The Principal Applicant, born December 31, 1977, and the Minor Applicant, born August 31, 2006, are citizens of China. On March 9, 2010, they arrived in Canada at Pearson International Airport under valid Canadian visitor visas and Chinese passports.

[4] On April 12, 2010, the Principal Applicant made an inland refugee claim for herself and the Minor Applicant at an inland immigration office in Toronto [the Refugee Claim]. In making the Refugee Claim, the Principal Applicant identified herself as Hong Yun Sun, born July 10, 1975, and the Minor Applicant as Xing Zhe Sun, born January 7, 2007. The Principal Applicant also stated that she and the Minor Applicant arrived at Pearson International Airport on March 12, 2010.

[5] In the Refugee Claim, the Principal Applicant alleged fear of persecution by the Public Security Bureau [PSB] in China due to her involvement with illegal underground Christian church services in China. In 2012, the RPD granted the Principal Applicant and the Minor Applicant, under the respective aliases Hong Yun Sun and Xing Zhe Sun, status as Convention refugees [the 2012 Decision]. In April 2014, the Applicants gained permanent resident status in Canada under the names Hong Yun Sun and Xing Zhe Sun.

[6] On April 15, 2021, the Minister served the Applicants with an application for vacation of refugee protection pursuant to section 109 of IRPA [the Vacation Application]. The Vacation Application requested the vacation of the 2012 Decision.

[7] The Vacation Application alleged that the Principal Applicant directly or indirectly misrepresented or withheld material facts, relating to relevant matters before the RPD of first instance, and that the Principal Applicant's narrative may have been exaggerated or fabricated. The Vacation Application alleged that, contrary to information in the Refugee Claim, the Principal Applicant and the Minor Applicant are respectively, Hong Xia Li and Jun Feng Qu, both with birth dates different than as asserted in the Refugee Claim. The Vacation Application further alleged that, contrary to the Refugee Claim, the Applicants arrived in Canada on March 9, 2010, accompanied by the husband of the Principal Applicant and father of the Minor Applicant. The Vacation Application submitted that, given this information, the Principal Applicant had potentially also fabricated her narrative in the Refugee Claim.

[8] In a letter to the RPD dated March 8, 2023 [Counsel's Letter], the Applicants' then counsel requested an in-chambers decision, stating the following:

Following a recent discussion with the respondent, she has advised me that she wishes to concede to the allegations.

Ms. Hong Yun SUN concedes that she is in fact Ms. Hong Xia LI, and that her son, Xing Zhe SUN, in [sic] in fact Jun Feng QU.

As the applicants are conceding to the facts in the Application for Vacation of Refugee Protection, and understand the consequences of conceding to the facts, they are requesting that these

proceedings be held In Chambers and a decision be made In Chambers.

[9] Counsel's Letter included an affidavit sworn by the Principal Applicant on March 8, 2023 [the Affidavit]. In the Affidavit, the Principal Applicant deposes she and her son are not Hong Yun Sun and Xing Zhe Sun.

[10] In a decision dated March 17, 2023, the RPD denied the Applicants' application for an in-chambers decision, given the significant implications for the Applicants. The hearing for the Vacation Application then occurred on March 21, 2023.

### III. Decision Under Review

[11] In the Decision of which the Applicants now seek judicial review, the RPD allowed the Vacation Application, finding that the 2012 Decision was obtained based on a material representation or withholding of a material fact. Consequently, the RPD rejected the Applicants' claims for refugee protection and nullified the 2012 Decision.

[12] The RPD found that the Principal Applicant had misrepresented the Applicants' identities. As such, the RPD found the panel in the first instance was unable to properly analyze the Applicants' identities, which is a crucial element of a refugee claim. The RPD also found the Principal Applicant misrepresented that she was involved in an underground church and wanted by the Chinese authorities.

[13] The RPD found that these misrepresentations led to the Applicants receiving a positive decision in their refugee claim, and had the panel of first instance known about the misrepresentations, the Applicants would not have received this positive determination.

[14] In conclusion, the RPD found as follows:

Having carefully considered the Minister's evidence and the *viva voce* testimony of the Respondents, their use of a false identity, a false birthdate, a false narrative, their travel route to enter Canada, and their use of these to initiate their refugee claim, the panel allows the Minister's application.

#### IV. Issues

[15] The sole issue for the Court's determination is whether the Decision is reasonable. As is implicit in that articulation, the standard of reasonableness applies to the Court's review of the Decision (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17).

[16] The Respondent also requests, as a preliminary issue, that the style of cause (which, as prepared by the Applicants, names both the Minister and the Minister of Citizenship and Immigration as Respondents) be amended to remove the Minister of Citizenship and Immigration.

V. Analysis

A. *Preliminary Issue*

[17] The Applicants take no issue with the Respondent's submissions that the Minister is the only correctly named Respondent. As such, I need not set out and expressly analyze those submissions, other than to say that I agree with them and that my Judgement will amend the style of cause accordingly (such that it reads as set out above).

B. *Reasonableness of the Decision*

[18] The Applicants' principal argument is that the RPD erred by misinterpreting the concession or admission that they made in relation to the Vacation Application and therefore failed to perform the required analysis under subsection 109(1) of IRPA. They argue that, in both the Affidavit and Counsel's Letter, they conceded only that their true identifies were as alleged by the Minister in the Vacation Application and that they employed aliases in advancing the Refugee Claim. The Applicants submit that they did not admit to other allegations in the Vacation Application, specifically, the allegation that the Principal Applicant had misrepresented in her narrative that she was a member of an underground Christian church in China, that her church was raided by the PSB, or that she had been in hiding in China for fear of arrest and imprisonment.

[19] I appreciate that the Affidavit and Counsel's Letter could be argued to be somewhat ambiguous as to whether the Applicants were admitting that they had misrepresented their identities or whether they were admitting to the allegations in the Vacation Application more

broadly. However, whether in response to such ambiguity or otherwise, the RPD took the prudent approach of declining to accede to the Applicants' request that the Vacation Application be addressed in chambers (i.e., without any personal appearance by the Applicants). Instead, the RPD insisted on a hearing, albeit held by videoconference, at which the Principal Applicant gave oral testimony.

[20] In the course of that testimony, under questioning by the Minister's counsel, the Principal Applicant stated as follows:

**MINISTER'S COUNSEL:** Was the PSB looking for you when you left China?

**PRINCIPAL RESPONDENT:** Actually, no. Actually, no.

**MINISTER'S COUNSEL:** Were you ever a member of an underground church?

**PRINCIPAL RESPONDENT:** No. In China, I, I was a member in a, a real church, a church. Christianity.

[21] The Applicants' then counsel declined to ask any follow-up questions.

[22] At the hearing of this application for judicial review, the Applicants' current counsel argued that, when the Principal Applicant responded in the negative to the question whether she was ever a member of an underground church, and stated that she had been a member of a "real church", then referencing Christianity, she was merely equating an underground church with a false church. The Applicants argue that the RPD erred in misinterpreting this evidence as an admission by the Principal Applicant that she had not been a member of a church that was

unauthorized by Chinese authorities such as would attract the attention of the PSB, and thereby concluding that the Applicants had presented a false narrative in the Refugee Claim.

[23] Similarly, the Applicants argue that when the Principal Applicant answered in the negative to the question whether the PSB were looking for her when she left China, she was intending to convey that there was, at the time of her departure from China, no active investigation of her personally, as opposed to other members of her church. The Applicants argue that the RPD erred in misinterpreting this evidence as an admission by the Principal Applicant that she was never wanted by the PSB, and thereby concluding that the Applicants had presented a false narrative in their Refugee Claim.

[24] I do not find these arguments persuasive. At a minimum, the RPD's interpretation of the oral testimony is an available interpretation of that evidence. I also note that, in relation to the question whether the PSB were looking for the Principal Applicant, the written narrative presented with the Refugee Claim asserted that the PSB attended at her parents' home multiple times, inquiring about her religious activities and her whereabouts, while she was in hiding in the period leading to her departure from China. It is not possible to reconcile that narrative even with the interpretation of her oral testimony that the Principal Applicant now advances.

[25] The RPD's analysis is explained intelligibly, is grounded in an available (and, in my view, compelling) interpretation of the evidence, and therefore easily withstands reasonableness review.



[26] The Applicants also argued in their written submissions that the RPD erred by failing to conduct an analysis under subsection 109(2) of IRPA, which provides that the RPD may reject a vacation application, notwithstanding a material misrepresentation as contemplated by subsection 109(1), if the RPD is satisfied that the RPD at first instance had considered other evidence sufficient to justify granting refugee protection. The Applicants' written submissions also reference the Applicants having attended a Christian church in Canada.

[27] However, at the hearing of this application, the Applicants acknowledged that the RPD at first instance was not presented with evidence of the Applicants' religious activities in Canada. Consistent with that acknowledgment, there is no evidence in the record before the Court of the RPD at first instance being presented with such information or any other information that could inform a subsection 109(2) analysis favourable to the Applicants in the Vacation Application. Nor for that matter is there any evidence of the RPD being asked to consider any such information or perform any such analysis in the Vacation Application. Accordingly, I find that the Applicants' subsection 109(2) arguments establish no reviewable error in the Decision.

[28] Finally, the Applicants' written submissions also present an argument that the RPD conducted a flawed inadmissibility analysis under section 40 of IRPA. I need not set out the Applicants' argument, as I agree with the Respondent that the RPD did not make an inadmissibility finding under section 40. The Decision is limited to the vacation of the Applicants' refugee status pursuant to section 109. As such, this argument establishes no reviewable error.

[29] In summary, I find the Decision reasonable, and my Judgment will dismiss this application for judicial review. Neither party proposed any question for certification for appeal, and none is stated.

**JUDGMENT IN IMM-4460-23**

**THIS COURT'S JUDGMENT is that:**

1. The style of cause is amended to remove the Minister of Citizenship and Immigration as a Respondent.
2. This application for judicial review is dismissed.
3. No question is certified for appeal.

"Richard F. Southcott"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4460-23

**STYLE OF CAUSE:** HONG XIA LI, a.k.a. HONG YUN SUN and JUN FENG QU a.k.a. XING ZHE SUN v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 19, 2024

**JUDGMENT AND REASONS:** SOUTHCOTT J.

**DATED:** SEPTEMBER 24, 2024

**APPEARANCES:**

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