Date: 20090415

Docket: IMM-3524-08

Citation: 2009 FC 379

Ottawa, Ontario, April 15, 2009

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

HUI CHEN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT

[1] This is an application pursuant to subsection 72 (1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of a decision of an Pre-Removal Risk Assessment (PRRA) officer (Officer), dated May 5, 2008 (Decision) refusing the Applicant's application and determining that the Applicant would not be subject to risk of persecution, danger of torture, risk to life or risk of cruel and unusual treatment or punishment if returned to her country of nationality or habitual residence.

BACKGROUND

[2] The Applicant says she is a Chinese citizen who began practising Falun Gong in China on July 3, 2004 following her neighbour's advice that it would help with her insomnia. After about a week, the Applicant noticed that her insomnia was diminishing, so she began to practise Falun Gong in a group of seven practitioners once a week.

[3] On April 27, 2005, the Public Safety Bureau (PSB) discovered her practice group and came to arrest them. The Applicant escaped the practice site and went into hiding. She learned the next day that her neighbour had been arrested.

[4] On April 29, 2005, the PSB went to the Applicant's home searching for her and told her parents that she was part of an "evil cult." They searched her home and took her Resident Identity Card. The PSB returned to the Applicant's home frequently to search for her.

[5] The Applicant was advised by her family that on May 5, 2008, the PSB had issued an arrest warrant against her. The Applicant was extremely scared for her safety and for her life, so she fled China and came to Canada by air and landed in Vancouver on June 23, 2005. She made a refugee claim a few days later.

[6] The refugee claim was rejected by the Refugee Protection Division (RPD) on March 26, 2007, because the Applicant failed to establish that she was a national of the People's Republic of

China. This was primarily because she did not provide her Resident Identity Card. Her request for leave to the Federal Court of Canada was denied on July 11, 2007.

[7] The Applicant submitted a PRRA application on August 3, 2007 at an interview at the Greater Toronto Enforcement Centre. At the interview, the Applicant was advised that she would be returned to China unless her PRRA was granted. She filled out a form for a Chinese passport and provided an original copy of her Chinese household register. She was also provided with a new translation of her Chinese household register, as the previous copy had been seized by Immigration.

[8] The Applicant hired an immigration consultant, Roy Kellogg, to advise her on the PRRA and he wrote submissions on her behalf. On June 5, 2008, the Applicant was called into the Greater Toronto Enforcement Centre where she received the refusal of her PRRA application and again filled out a form for a Chinese passport.

[9] After the refusal of her PRRA, the Applicant asked Mr. Kellogg to provide a copy of her PRRA application and supporting documents. He provided her with a copy of her PRRA forms. The Applicant's current counsel requested a copy of the full package submitted, including legal submissions and documentary evidence. Mr. Kellogg provided an e-mail copy of his submission letter.

DECISION UNDER REVIEW

[10] The Officer reviewed the letter written by the Falun Dafa Association of Canada, which confirmed the Applicant's participation in Falun Gong activities. However, the Officer found that the letter did not rebut the findings of the RPD and did not establish the Applicant's identity as a citizen of China. Therefore, the Officer gave it minimal weight. The Applicant also provided several photos of persons in a park practising Falun Gong positions, as well as of rallies and public gatherings. However, the Officer found that the photos were insufficient evidence to rebut the findings of the RPD.

[11] In the absence of new evidence, the Officer relied on the country documentation to conclude that the Applicant faces no more then a mere possibility of persecution and would not likely be at a risk of torture, a risk to life or a risk of cruel and unusual punishment if returned to China.

ISSUES

[12] The Applicant raises the following issues:

1) Did the Officer err in law and fact, as well as breach procedural fairness, when she found the Applicant not to be a Chinese citizen?

2) Did the Officer fail to provide adequate reasons in her Decision?

3) Did the Officer err in failing to consider the evidence showing that the Applicant would be tortured or subjected to cruel and unusual treatment if she returned to China?

[13] The following provisions of the Act are applicable in these proceedings:

Convention refugee	**Définition de « réfugié »**
96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	*a*) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(*b*) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	*b*) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.
Person in need of protection	**Personne à protéger**
97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of	**97.** (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait

nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection

Personne à protéger

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

Application for protection

112. (1) A person in Canada, other than a person referred to in subsection 115(1), may, in accordance with the regulations, apply to the Minister for protection if they are subject to a removal order that is in force or are named in a certificate described in subsection 77(1).

Demande de protection

112. (1) La personne se trouvant au Canada et qui n'est pas visée au paragraphe 115(1) peut, conformément aux règlements, demander la protection au ministre si elle est visée par une mesure de renvoi ayant pris effet ou nommée au certificat visé au paragraphe 77(1).

Exception

(2) Despite subsection (1), a person may not apply for protection if

(*a*) they are the subject of an authority to proceed issued under section 15 of the *Extradition Act*;

(*b*) they have made a claim to refugee protection that has been determined under paragraph 101(1)(*e*) to be ineligible;

(*c*) in the case of a person who has not left Canada since the application for protection was rejected, the prescribed period

Exception

(2) Elle n'est pas admise à demander la protection dans les cas suivants :

a) elle est visée par un arrêté introductif d'instance pris au titre de l'article 15 de la *Loi sur l'extradition*;

b) sa demande d'asile a été jugée irrecevable au titre de l'alinéa 101(1)*e*);

c) si elle n'a pas quitté le Canada après le rejet de sa demande de protection, le délai prévu par règlement n'a pas

has not expired; or

(*d*) in the case of a person who has left Canada since the removal order came into force, less than six months have passed since they left Canada after their claim to refugee protection was determined to be ineligible, abandoned, withdrawn or rejected, or their application for protection was rejected.

Restriction

(3) Refugee protection may not result from an application for protection if the person

(*a*) is determined to be inadmissible on grounds of security, violating human or international rights or organized criminality;

(*b*) is determined to be inadmissible on grounds of serious criminality with respect to a conviction in Canada punished by a term of imprisonment of at least two years or with respect to a conviction outside Canada for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years;

(*c*) made a claim to refugee

expiré;

d) dans le cas contraire, six mois ne se sont pas écoulés depuis son départ consécutif soit au rejet de sa demande d'asile ou de protection, soit à un prononcé d'irrecevabilité, de désistement ou de retrait de sa demande d'asile.

Restriction

(3) L'asile ne peut être conféréau demandeur dans les cas suivants :

a) il est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux ou criminalité organisée;

b) il est interdit de territoire pour grande criminalité pour déclaration de culpabilité au Canada punie par un emprisonnement d'au moins deux ans ou pour toute déclaration de culpabilité à l'extérieur du Canada pour une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;

c) il a été débouté de sa

protection that was rejected on the basis of section F of Article 1 of the Refugee Convention; or

(*d*) is named in a certificate referred to in subsection 77(1).

Consideration of application

113. Consideration of an application for protection shall be as follows:

(*a*) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;

(*b*) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;

(*c*) in the case of an applicant not described in subsection 112(3), consideration shall be on the basis of sections 96 to 98;

(*d*) in the case of an applicant described in subsection 112(3), consideration shall be on the basis of the factors set out in section 97 and

demande d'asile au titre de la section F de l'article premier de la Convention sur les réfugiés;

d) il est nommé au certificat visé au paragraphe 77(1).

Examen de la demande

113. Il est disposé de la demande comme il suit :

a) le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;

b) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;

c) s'agissant du demandeur non visé au paragraphe 112(3), sur la base des articles 96 à 98;

d) s'agissant du demandeur visé au paragraphe 112(3), sur la base des éléments mentionnés à l'article 97 et, d'autre part :

(i) in the case of an applicant for protection who is inadmissible on grounds of serious criminality, whether they are a danger to the public in Canada, or

(i) soit du fait que le demandeur interdit de territoire pour grande criminalité constitue un danger pour le public au Canada,

(ii) in the case of any other applicant, whether the application should be refused because of the nature and severity of acts committed by the applicant or because of the danger that the applicant constitutes to the security of Canada.

(ii) soit, dans le cas de tout autre demandeur, du fait que la demande devrait être rejetée en raison de la nature et de la gravité de ses actes passés ou du danger qu'il constitue pour la sécurité du Canada.

167. For the purpose of determining whether a hearing is required under paragraph 113(*b*) of the Act, the factors are the following:

167. Pour l'application de l'alinéa 113*b*) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise :

(*a*) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;

a) l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur;

(*b*) whether the evidence is central to the decision with respect to the application for protection; and

b) l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;

(*c*) whether the evidence, if accepted, would justify allowing the application for protection.

c) la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

STANDARD OF REVIEW

[14] The Applicant raises issues of procedural fairness and adequate reasons to which the standard of review is correctness: *Suresh v. Canada (Minister of Citizenship and Immigration)* 2002 SCC 1.

[15] *Fi v. Canada (Minister of Citizenship and Immigration)* 2006 FC 1125 at paragraph 6 found that the standard of review on a PRRA decision is reasonableness *simpliciter*. However, particular findings of fact should not be disturbed unless made in a perverse or capricious manner or without regards to the evidence before the PRRA officer.

[16] In *Elezi v. Canada (Minister of Citizenship and Immigration)* 2007 FC 240 at paragraph 22 (*Elezi*) the Court held as follows:

> When assessing the issue of new evidence under subsection 113(a), two separate questions must be addressed. The first one is whether the officer erred in interpreting the section itself. This is a question of law, which must be reviewed against a standard of correctness. If he made no mistake interpreting the provision, the Court must still determine whether he erred in his application of the section to the particular facts of this case. This is a question of mixed fact and law, to be reviewed on a standard of reasonableness.

[17] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, the Supreme Court of Canada recognized that, although the reasonableness *simpliciter* and patent unreasonableness standards are theoretically different, “the analytical problems that arise in trying to apply the different standards undercut any conceptual usefulness created by the inherently greater flexibility of having multiple standards of

review": *Dunsmuir* at paragraph 44. Consequently, the Supreme Court of Canada held that the two reasonableness standards should be collapsed into a single form of "reasonableness" review.

[18] The Supreme Court of Canada in *Dunsmuir* also held that the standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[19] Thus, in light of the Supreme Court of Canada's decision in *Dunsmuir* and the previous jurisprudence of this Court, I find the standard of review applicable to the non-procedural fairness issues raised by the Applicant to be reasonableness. When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir* at paragraph 47. Put another way, the Court should only intervene if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

ARGUMENTS

The Applicant

Determination that the Applicant was not a Chinese Citizen

[20] The Applicant submits that the nature of, and reasons for, the Decision in this application are contradictory. The Officer assigned no weight to the evidence that the Applicant provided in her PRRA application because she determined that the Applicant was not a Chinese citizen, yet she determined China to be the country where the Applicant would face no risk if returned. The Applicant believes that this is an unreasonable conclusion.

[21] The Applicant says that she was "removal ready" prior to being requested to submit her PRRA application and was advised that she would be removed to her country of citizenship. The Applicant states that it was disingenuous and unfair for the Officer to ignore the evidence of potential risk put forward by the Applicant and to rely on the previous finding of the RPD that she had not demonstrated she was a Chinese citizen.

[22] The Applicant submits that years after the RPD Decision, and after being determined ready for removal to China, the Officer should have accepted the Applicant's identity and dealt with the substance of her application. If the Officer in fact doubted that the Applicant was a citizen of China, then the Officer should have advised her and given her a chance to respond. It was unreasonable, in the Applicant's view, for the Officer to believe that her identity had not been established, since she had provided further identity documents and had been advised that she was being removed to China.

Failure to Provide Adequate Reasons

[23] The Applicant also submits that the Officer did not provide adequate reasons in concluding that she would not be tortured or subjected to cruel and unusual treatment. The Applicant relies on *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at page 845; *Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247 at paragraph 56 and *Via Rail Canada Inc. v. National Transportation Agency*, [2001] 2 F.C. 25 at paragraph 22 for the proposition that adequate reasons must address the major points in issue and provide a line of analysis.

[24] The Applicant submits that the Decision falls short of the threshold of adequate reasons because the Officer did not engage in a meaningful reasoning process. The reasons are extremely short, lack analysis and any in-depth consideration of the evidence. The Decision illustrates that the Officer did not address the issues put forward by the Applicant, but relied on the decision of the RPD.

Failure to Consider the Evidence

[25] The Applicant submits that the Officer was required to examine the evidence which she put forth: section 113(a) of the Act. However, the Officer did not consider the new evidence which she submitted and appears to only have considered one document, which is inadequate: *Streanga v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 792 at paragraphs 29 and 31; *Rizvi v. Canada (Minister of Citizenship and Immigration)* 2007 FC 1017 at paragraph 9. The Applicant

reminds the Court that the more important the evidence not mentioned "the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact without regard to the evidence": *Bains v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 497 (F.C.T.D.); *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425 (F.C.T.D.) at paragraph 17 and *Christopher v. Canada (Minister of Citizenship and Immigration)* 2008 FC 964 at paragraphs 18 and 20.

[26] The Applicant says she provided evidence that she practises Falun Gong. She also provided evidence that Falun Gong practitioners are persecuted in China. However, the Officer did not consider this evidence and did not investigate the potential risks that the Applicant could face, all of which makes the Decision unreasonable: *Erdogu v. Canada (Minister of Citizenship and Immigration)* 2008 FC 407 at paragraph 33.

Incompetence of Counsel

[27] The Applicant states that she retained Roy Kellogg, an immigration consultant to represent her on her PRRA. She provided him with a copy of her household register from China to demonstrate she was a Chinese citizen and asked him to submit it with her PRRA application. However, the Applicant's PRRA application did not include her Chinese household register. The Applicant was advised that Mr. Kellogg did not include it as "Immigration already had a copy."

[28] The Applicant contends that Mr. Kellogg did not behave in a coherent, stable and professional manner. She says she has made a complaint against Mr. Kellogg to the Canadian Society of Immigration Consultants.

[29] The Applicant states that the inclusion of her Chinese household register was a fundamental element to her PRRA application and that Mr. Kellogg's actions caused prejudice to her because he did not behave in an adequate and professional manner. The Applicant submits that her PRRA decision would have been different had the Chinese household register been included.

The Respondent

Redetermination Not Required

[30] The Respondent submits that an applicant must live with his or her choice of representation whether or not their counsel is a lawyer or not: *Cove v. Canada (Minister of Citizenship and Immigration)* 2001 FCT 266 and *Shah v. Canada (Minister of Citizenship and Immigration)* 2008 FC 708 at paragraph 23. This Court has been reluctant to accept allegations of professional misconduct in the absence of proof: *Nunez v. Canada (Minister of Citizenship and Immigration),* [2000] F.C.J. No. 555 (F.C.).

[31] The Respondent submits that the Applicant's sworn evidence suggests that additional identify evidence was not submitted in support of her PRRA because of the conduct of the immigration consultant she had retained at the time. The Applicant is bound by her choice of

consultant and his conduct, and she cannot use his alleged misconduct as a ground to have her PRRA redetermined: *Radji v. Canada (Minister of Citizenship and Immigration)* 2007 FC 100 at paragraph 33 (*Radji*). The Respondent says that the Applicant's evidence of misconduct is insufficient because she relies on notes to file from an interview with an Enforcement Officer to show her consultant's lack of professionalism. However, she has not provided this evidence to the Court. As well, there is no documentary evidence to establish that the Applicant made a complaint to the Canadian Society of Immigration Consultants or advised her former consultant of the complaint. Nor is there evidence from the consultant as to what occurred. In the absence of sufficient evidence, the Respondent submits this submission cannot succeed: *Muhammed v. Canada (Minister of Citizenship and Immigration)* 2003 FC 828 at paragraph 17 (*Muhammed*).

[32] The Respondent also says that, even if the consultant was at fault for failing to submit a copy of the Applicant's Chinese household register, the Applicant did not establish that this document would have affected the outcome. The Officer can only consider evidence within the parameters of section 113(a) of the Act. There is no evidence to show why the Applicant's Chinese household register could not have been presented prior to the Applicant's hearing over three years later, or prior to the March 19, 2007 decision being rendered. The Applicant was aware that identity was an issue. The Respondent notes that if there are grounds for the Chinese household register to be considered by a PRRA Officer under section 113(a) of the Act, the Applicant can always apply for a second PRRA on that basis.

[33] The Respondent does not dispute that the Court has found, in some cases, that incompetent counsel can raise a natural justice issue. However, the Respondent says that in this matter the Applicant has not established that "if not for the counsel's unprofessional errors, the result of the proceeding would have been different"; nor are the facts "clearly proven": *Radji* at paragraph 32.

Identity Finding was Reasonable

[34] The Respondent says that the onus was on the Applicant to ensure that all of the relevant evidence was before the Officer: *Ferguson v. Canada (Minister of Citizenship and Immigration)* 2008 FC 1067 at paragraph 35. The Applicant's argument that the Officer's findings in relation to identity are unreasonable must fail because the RPD's identity finding cannot be challenged on judicial review, especially since the Applicant's application for leave to judicially review the RPD's decision has already been dismissed: *H.K. v. Canada (Minister of Citizenship and Immigration)* 2004 FC 1612; *Bolombo v. Canada (Minister of Citizenship and Immigration)* 2005 FC 375 and *Hausleitner v. Canada (Minister of Citizenship and Immigration)* 2005 FC 641.

[35] The Respondent notes that the issue on this application is whether the Officer made a reasonable finding with respect to the Applicant's identity. Given the evidence that was submitted in support of the Applicant's PRRA, the finding was reasonable. No further identity evidence was adduced by the Applicant in support of her PRRA. The Officer was entitled to rely on the finding of the RPD with respect to the identity documents that were before that tribunal.

No Need to Assess the Remainder of the Claim

[36] The Respondent takes the position that once a tribunal has concluded that identity has not been established, there is no need to analyze the rest of the evidence or the claim. An Applicant's failure to prove identity effectively undermines any claim of a well-founded fear of persecution: *Husein v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 726 at paragraph 13; *Li v. Canada (Minister of Citizenship and Immigration)* 2006 FC 296 at paragraph 8; *Zheng v. Canada (Minister of Citizenship and Immigration)* 2008 FC 877 at paragraph 15 and *Najam v. Canada (Minister of Citizenship and Immigration)* 2004 FC 425 at paragraph 16.

[37] The Respondent concludes that the Officer reasonably found that the Applicant's identity had not been established. This meant that country condition evidence could not be properly assessed because it could not be attached to the Applicant's personal circumstances: *Jin v. Canada (Minister of Citizenship and Immigration)* 2006 FC 126 at paragraph 26.

Reasons are Adequate

[38] The Respondent submits that the purpose of providing reasons has been set out in *Lake v. Canada (Minister of Justice)* 2008 SCC 23 in which the Court stated that "[t]he purpose of providing reasons is twofold: to allow the individual to understand why the decision was made; and to allow the reviewing court to assess the validity of the decision." The Respondent says that the main issue before the Officer was whether the Applicant had established her identity as a Chinese

national. Since she adduced no new evidence of her identity as a Chinese national, the Officer's reasons were sufficient. The reasons also adequately explain why the PRRA was not decided in the Applicant's favor. There was no reviewable error.

ANALYSIS

[39] In her affidavit, the Officer describes how she addressed the Applicant's PRRA application:

> 8. I determined that the Applicant did not rebut the finding of the RPD that she had not established her identity as a citizen of China. However, in accordance with section 241 of the *Immigration and Refugee Protection Regulations*, I determined that even though the Applicant had not established that she was a citizen of China, the application of any of the other criteria in the regulation would lead to her being removed to China. I therefore assessed her risk in China.

[40] So the Officer accepted that, notwithstanding the continuing problems over the Applicant's identity, the Applicant would be removed to China and that it was necessary to assess risk against China.

[41] In the Decision itself, the Officer provides the following analysis and conclusions:

> The applicant's refugee claim was rejected by the Refugee Protection Division on March 26, 2007 as she failed to establish that she is a national of the People's Republic of China. The applicant's request to appeal to the Federal Court was denied on July 11, 2007.
>
> The applicant submitted a PRRA application received on August 17, 2007 followed by submissions received on August 24, 2007. I have reviewed the letter written by the Falun Dafa Association of Canada which confirms the applicant's participation in Falun Gong activities. However the letter does not rebut the findings of the RPD and does not establish her identity as a citizen of China; and therefore give it

> minimal weight. The applicant also provided several photos of persons at the park practicing Falun Gong positions, rallies and public gatherings. I find the photos are insufficient evidence to rebut the findings of the RPD.
>
> In the absence of any other new evidence, the country documentation leads me to conclude the applicant faces no more than a mere possibility of persecution as described in section 96 of the *Immigration and Refugee Protection Act* (IRPA). Similarly, I find the applicant would not likely be at risk of torture, or likely to face a risk to life, or a risk of cruel and unusual treatment or punishment as described in section 97 of IRPA if returned to China.

[42] The RPD had concluded its decision as follows:

> In summary, I find that, on a balance of probabilities, the claimant has failed to establish that she is a national of the People's Republic of China. The claimant may well be Chinese, as she has used a Mandarin interpreter, but could be a citizen of Taiwan, Singapore or any number of countries in the world. Therefore, since I find that the claimant is not a citizen of the People's Republic of China, I cannot find there is a serious possibility that she would be persecuted by authorities in the People's Republic of China or be in fear of risk to her life or to a risk of cruel and unusual treatment or punishment or in danger of being tortured.

[43] The Applicant says that it was disingenuous and unfair for the PRRA Officer to ignore the evidence of potential risk she put forward and to simply rely upon the previous findings of the RPD that the Applicant had not demonstrated she was a Chinese national. She says that the Officer should have dealt with the risks associated with her membership in Falun Gong if she was returned to China.

[44] She says that because of the identity problem in her refugee claim, her risk was never assessed by the RPD. And now her risk has not been assessed under the PRRA because the Officer

used the same identity issue to deny her claim. The result is that she is being sent back to a country against which no risk assessment has been done, which defeats the whole spirit and purpose of a PRRA application.

[45] The Pre-removal Risk Assessment guidelines (PP3) at 10.10 instruct officers that “both our domestic and international legal obligations require the consideration of risk in any country to which an individual is to be removed, whether it is the individual’s country of citizenship or former habitual residence or not.”

[46] As the Officer explains in her affidavit, she attempted to comply with these guidelines and obligations by applying section 241 of the Regulations to her analysis.

[47] The Applicant says that the Decision shows that the Officer fell far short of assessing risk in accordance with these obligations. She says that the reasons ignore relevant evidence concerning her Falun Gong leadership activities and are, therefore, inadequate.

[48] The Respondent says that there was little more that the Officer could do because the central issue was identity and it was not unreasonable for her to rely upon the RPD decision in finding that nothing had changed.

[49] The Respondent relies upon cases such as *Liu v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 831 at paragraph 18 for the proposition that "proof of identity is a pre-requisite for a person claiming refugee protection":

> [W]ithout the foundation of identity there can "be no sound basis for testing or verifying the claims of persecution or, indeed, for determining the Applicant's true nationality."

[50] Both sides agree that all of the case law on this point involves refugee claims. The Respondent says it should make no difference that we are now considering a PRRA Decision. The Applicant says it should make a difference, particularly on these facts, where risk has never been assessed by either the RPD or the PRRA Officer as a result of the identity concerns.

[51] In the present case, the Applicant was assessed against China and, the Respondent says, because she could not establish her identity, there was no link between the country condition documents and the personal situation of the Applicant. If identity cannot be established, then risk cannot be assessed.

[52] The Applicant says that risk can be assessed because the country documentation referred to persecution and section 97 risks for Falun Gong practitioners in China. The Applicant had at least established that she practiced Falun Gong and had participated in demonstrations.

[53] The basis of the Officer's Decision appears to be that nothing submitted with the PRRA application changes what the RPD decided.

[54] However, the PRRA Officer does proceed further because she recognizes an obligation to go beyond the Applicant's evidence and review country condition documents. Having done that she does not say that she cannot assess risk because of the identity issue; she says "the country documentation leads me to conclude the applicant faces no more than a mere possibility of persecution… [and] would not likely be at risk under section 97 of the Act." This is in accordance with what the Officer says she did in her affidavit: "I therefore assessed her risk in China." The decision on section 97 risk is, according to the Officer, based upon the country condition documents. I do not take the Officer to be saying that she did not proceed with the risk assessment because identity had not been established.

[55] I believe the Officer was correct to conclude that, notwithstanding the continuing identity problems, she was still obliged to assess risk against the country of removal. The failure to establish identity means that there is no need to proceed further with an analysis of persecution. See: *Najam v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 516 at paragraph 16; *Su v. Canada (Minister of Citizenship and Immigration)* 2007 FC 680 at paragraph 14; *Elmi v. Canada (Minister of Citizenship and Immigration)* 2008 FC 773, at paragraph 4; *Jin* at paragraph 26; *Liu* at paragraph 18. I do not read this line of cases as suggesting that a PRRA officer need go no further in assessing risk if identity is a continuing problem, and the Officer in this case did proceed beyond the identity issue.

[56] That being the case, the Officer's analysis of the country conditions documents was, in my view, inadequate. There was reliable documentation before the Officer of the torture and

mistreatment of Falun Gong supporters in China that was not referred to and that directly contradicted the Officer's conclusions. See *Cepeda*. This means that important evidence was overlooked and the reasons do not provide an adequate assessment of that evidence. For these reasons, the Decision is unreasonable and unsafe and should be returned for reconsideration.

[57] I have reviewed the other issues raised by the Applicant and do not think they establish reviewable errors.

[58] Counsel are requested to serve and file any submissions with respect to certification of a question of general importance within seven days of receipt of these Reasons for Judgment. Each party will have a further period of three days to serve and file any reply to the submission of the opposite party Following that, a Judgment will be issued.

"James Russell"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-3524-08
STYLE OF CAUSE:	HUI CHEN
	APPLICANT
	- and -
	THE MINISTER OF CITIZENSHIP AND IMMIGRATION
	RESPONDENT
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	FEBRUARY 12, 2009
REASONS FOR :	HON. MR. JUSTICE RUSSELL
DATED:	April 15, 2009

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