Federal Court  Cour fédérale

Date: 20100611

Docket: IMM-3602-09

Citation: 2010 FC 624

Ottawa, Ontario, June 11, 2010

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

FUJUN SUN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Once credibility is at issue (even if certain elements are not in question), the very core of a refugee claim may lose its substance. The analysis of a chronology of events, as to whom and for what purpose a refugee claim was made, may reveal a claim without substance or one of no inherent logic. Recognizing that every applicant has his or her own encyclopaedia of references, dictionary of terms and galleries of portraits, if those, in and of themselves, lose their own inherent logic, then the very sense, which the applicant would have wanted the court to make of the claim, loses its substance.

[2] Without the corroboration of testimony, documentation or a coherent chronology of events, that which is void of substance cannot be made whole through legal argument alone.

II. Judicial Procedure

[3] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) of a June 9, 2009 decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB) determining that the Applicant, Ms. Fujun Sun, is neither a Convention refugee nor a person in need of protection.

III. Background

[4] Subsequent to having read the material in the file and hearing the parties, the Court is in agreement with the background-summary as stated by the RPD of the IRB, as well as its analysis.

[5] The Applicant, Ms. Fujun Sun, alleged the following:

[6] In August 2002, Ms. Fujun Sun arrived in Vancouver, British Columbia as an international student, to attend Coquilam College. In September 2004, her family in China was undergoing a stressful period that affected their financial ability to support the Applicant's education in Canada. Ms. Fujun Sun became depressed and was befriended by a woman in Vancouver who introduced her to Christianity. In December 2004, the Applicant began to attend Lingjitang (Oakridge) Church in Vancouver on a regular basis. In January 2006, Ms. Fujun Sun moved to Toronto, Ontario and

began to attend the Living Stone Assembly. To share the enjoyment of the services she attended, Ms. Fujun Sun sent Assembly pamphlets to her friends in China.

[7] Ms. Fujun Sun was married in Toronto on June 19, 2006, separated on October 15, 2006, and subsequently divorced in December 2007.

[8] On September 12, 2007, Ms. Fujun Sun received a telephone call from her mother advising her that officials from the Public Security Bureau (PSB) had visited their home and had told her parents that they had discovered an underground church, where illegal pamphlets sent by her daughter had been found. Officials of the PSB threatened her parents and instructed them to have their daughter return home. Fearing arrest, Ms. Fujun Sun made a refugee claim on September 17, 2007.

IV. Decision under Review

[9] The RPD made negative credibility findings due to Ms. Fujun Sun's short-lived marriage. Specifically, the RPD noted that Ms. Fujun Sun, when questioned about her wedding, did not know the name of the church in which she was married and did not know its Christian denomination. Also, the RPD held that it was unreasonable for her husband to continue to provide immigration guarantees to allow Ms. Fujun Sun to remain in Canada while finalizing his divorce from Ms. Sun.

[10] The RPD held that these findings raised questions regarding the credibility of her claim for refugee protection.

[11] The RPD noted that Ms. Fujun Sun claimed to be a refugee *sur place*, as the events which led her to claim protection occurred outside of her country of origin. The RPD also noted that the key issue in such claims is whether the actions of Ms. Fujun Sun have come to the notice of the authorities in the person's country of origin and how they are likely to be viewed by those authorities.

[12] The RPD held that the materials which Ms. Fujun Sun sent to China would be viewed as illegal by the authorities, but held the documentary evidence does not support the contention that she would be persecuted because of her religious beliefs

V. Standard of Review

[13] The standard of review with respect to questions of mixed fact and law are assessed according to the reasonableness standard (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47; *Canada (Minister of Citizenship and Immigration) v. Khosa*, 2009 SCC 12; [2009] 1 S.C.R. 339; *Espinoza v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 806, [2009] F.C.J. No. 918 (QL)).

[14] *Khosa*, above, explained the basis of *Dunsmuir*, above, that reviewing courts are to defer to decisions of triers of fact, "if the outcome falls within 'a range of possible, acceptable outcomes which are defensible in respect of the facts and law' (*Dunsmuir*, at para. 47). There might be more than one reasonable outcome" If the process has the consideration of "principles of justification,

transparency and intelligibility" then it is not open for a reviewing court to substitute its own point of view (*Khosa*, above, at para. 59).

[15] In this case, the IRB's findings fall within the range of possible outcomes; its decision is therefore reasonable, and this judicial review should be dismissed.

[16] Ms. Fujun Sun, in her Memorandum of Argument, submits that the IRB failed to consider the core issue of her claim, as to "whether the Applicant would be freely able to practice her religious [sic] upon return to China".

[17] Nowhere in her claim, neither in her Personal Information Form (PIF) nor her testimony did Ms. Fujun Sun state that she would be unable to practice her religion in China.

[18] On a number of occasions, Ms. Fujun Sun indicated that it is legal to be a Christian in China and that religious materials are not illegal. Moreover, even the Tribunal officer did not comment on the issue, which again indicated that this was not advanced as the basis of the claim (Transcript of Hearing, Tribunal Record at pp. 173 and 177).

[19] Although an applicant is not obliged to explain the legal basis of a claim, nevertheless, a subjective fear must be demonstrated for a claim to succeed. The onus is on an applicant to present reasons for claiming protection. Without written or oral evidence to substantiate a claim, the Panel cannot be faulted for failing to address this issue in its reasons:

> [3] In this case, we do not believe that the Refugee Division can be faulted for not deciding an issue that had not been argued and that did not emerge perceptibly from the evidence presented as a whole…

(*Pierre-Louis v. Canada (Minister of Employment and Immigration)*,]1993] F.C.J. No. 420 (QL), 46 A.C.W.S. (3d) 307 (F.C.A.); reference is also made to *Espinoza*, above; *Emamgongo v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 208, [2010] F.C.J. No. 244 (QL) at par. 19; *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164, [2001] F.C.J. No. 2118 (QL) (C.A.) at paras. 10-11).

[20] The Supreme Court of Canada held in *R. v. Sheppard*, [2002] 1 S.C.R. 869, 2002 SCC 26, that the inadequacy of reasons is not a free-standing right of challenge, which automatically constitutes a reviewable error. The Court held that the "requirement of reasons, in whatever context it is raised, should be given a functional and purposeful interpretation". Where the record as a whole indicates a basis upon which a trier of fact has reached a decision, a party seeking to overturn that decision for inadequacy must show that the deficiency in question has prejudiced the exercise of a legal right to appeal (*Sheppard*, above, at paras. 33-46-53; *R. v. Kendall*, [2005] O.J. No. 2457, 75 O.R. (3d) 565 (C.A.) at para. 44).

[21] The Panel's reasons clearly address Ms. Fujun Sun's reasons for claiming protection, and provide specific reasons for finding that she was not credible (Reasons for Decision, Applicant's Record at pp. 6-11).

[22] It is well-established that reasons serve two main purposes, for the parties to know that issues have been considered; and, to allow parties to bring an appeal or judicial review forward. The reasons for decision in this case have clearly satisfied the two purposes (*Via Rail Canada Inc. v. National Transportation Agency*, [2001] 2 F.C. 25, 100 A.C.W.S. (3d) 705; *Townsend v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 371, 231 F.T.R. 116; *Fabian v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1527, 244 F.T.R. 223).

[23] Moreover, the IRB's reasons satisfy the standard enunciated by the Federal Court in *Mendoza v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 687, 131 A.C.W.S. (3d) 323, and endorsed in *Nguyen v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 349, 137 A.C.W.S. (3d) 1203. Principally, the applicant in that case argued that the reasons for the decision, which were just over two paragraphs in length, were insufficient. Justice Eleanor Dawson disagreed. In dismissing the application for judicial review, she wrote:

> [13] …
>
> ...[R]easons are required to be sufficiently clear, precise and intelligible so that a claimant may know why his or her claim has failed and be able to decide whether to seek leave for judicial review. See: *Metherian v. Canada (Minister of Employment and Immigration)*, [1992] F.C.J. No. 545 (F.C.A.). The reasons of the RPD meet this criteria. While brief, the reasons set out in a clear, precise and intelligible fashion the reasons why Mrs. De Torres Mendoza's claim failed.

VI. Conclusion

[24] The Court notes the decision of Justice James Russell in *Malveda v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 447, 166 A.C.W.S. (3d) 337, where it was held:

> [41] However, when assessing the adequacy of reasons, those reasons "must not be held to a standard of perfection or read microscopically" (*Thomas* at para. 35; *Andryanov v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 186, [2007] F.C.J. No. 272 (QL) at para. 21; *Liang v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1501, [2003] F.C.J. No. 1904 (QL) at para. 42). As the Federal Court of Appeal asserted in *Ragupathy v. Canada (Minister of Citizenship and Immigration*, 2006 FCA 151, [2006] F.C.J. No. 654 (F.C.A.) (QL) at para. 15:
>
> > […] a reviewing court should be realistic in determining if a tribunal's reasons meet the legal standard of adequacy. Reasons should be read in their entirety, not parsed closely, clause-by-clause, for possible errors or omissions; they should be read with a view to understanding, not puzzling over every possible inconsistency, ambiguity or infelicity of expression.
>
> Thus, in assessing the adequacy of the reasons provided, a reviewing Court must look to the overall reasoning process contained in a decision.

[25] It is the Court's conclusion that the reasons provided are adequate. The reasons explain the RPD's finding with regard to the Applicant's credibility as well as its analysis of the alleged risk she will face if returned to China.

[26] Ms. Fujun Sun has not referred to any specific documentary evidence indicating that she would be persecuted in her country of origin.

[27] Ms. Fujun Sun's own testimony as to whether it was illegal to mail the documents to China was "No I did not because in China being a Christian is legal because those material are something about Christianity, there is nothing wrong" (Transcript of hearing, Tribunal Record at p. 177).

[28] Ms. Fujun Sun failed to establish that she faced persecution and the panel's decision was not unreasonable.

JUDGMENT

THIS COURT ORDERS that

1. The application for judicial review be dismissed;

2. No serious question of general importance be certified.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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