

Federal Court



Cour fédérale

Date: 20140703

Docket: IMM-3025-13

Citation: 2014 FC 647

Ottawa, Ontario, July 3, 2014

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

QIONGZHONG YE

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

Nature of the matter

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision dated April 3, 2013 of the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada. The Board Member determined that the applicant, Qiongzong Ye, was not a convention refugee or person in need of protection under sections 96 and 97 of IRPA.

[2] For the reasons that follow the application is dismissed.

Facts

[3] The applicant's parents are Falun Gong practitioners who started practicing in 1998. The applicant supported them in their practice.

[4] On July 22, 1999, the Chinese government banned Falun Gong. In early 2006, the applicant's parents began to attend Falun Gong group practice at a fellow practitioner's home in the suburbs. The applicant drove them to and from this location, and sometimes joined her parents in their practice.

[5] On March 11, 2011, the applicant was working in the restaurant she and her husband owned when she received a telephone call from her husband, who informed her that the Public Security Bureau (PSB) had come to their home and taken her parents away. The PSB allegedly stated that they were investigating Falun Gong activities, and that they also wanted to question the applicant. The applicant decided to go into hiding, and went to a relative's home in the countryside to hide. One of her relatives contacted a smuggler and arranged for her to leave China.

[6] The applicant came to Canada on May 14, 2011 and made a refugee claim.

Decision under review

[7] The Member found that the applicant lacked credibility. The applicant alleged that her husband's elder brother, who as a member of the PSB is a key witness, informed her husband of the arrest and that her name was on a police wanted list, yet she omitted to mention him in her Personal Information Form (PIF). When asked to explain why she had omitted this from her PIF, she claimed that she didn't provide detail in her PIF, but rather just the highlights. The member found this explanation unsatisfactory, and stated that it would be reasonable to expect the applicant to include the elder brother in her story in light of his role in the PSB. She was represented by counsel at the time her PIF was drafted.

[8] Furthermore, the applicant noted in her PIF narrative that when the PSB came to arrest her parents, "They also said they were looking for me for questioning", whereas in her oral testimony she stated that it was her husband's elder brother who indicated that the PSB was looking for her. When this contradiction was pointed out to her, she had no explanation. The Member found this lack of explanation unsatisfactory. As a result, the Member found that based on this omission and inconsistency, on a balance of probabilities, the PSB did not make inquiries with respect to the applicant.

[9] The Member also pointed out that during her oral testimony, the applicant testified that after she went into hiding it was her relatives who made the arrangements for a smuggler at the end of April 2011. In her PIF narrative, she stated that it was her relatives and husband who were involved in arranging her smuggling at the beginning of April 2011. When this inconsistency

was pointed out to her, she said that she may have made a mistake. The Member found this explanation unsatisfactory, and determined as a result that the applicant did not go into hiding.

[10] The Member also pointed out that the applicant's marriage certificate says it was registered on May 9, 2011, and that according to the Marriage Law in China, both applicants who apply for marriage registration have to come to the registration office in person. She had, however, testified that the last time she saw her husband was approximately April 28, 2011. When this was pointed out to her, she explained that she did not see her husband at the time of the marriage, but it was arranged by her husband's elder brother, who was with the police. The Member determined, therefore, that the applicant's use of irregular means to obtain her marriage certificate led him to draw a negative inference with respect to her credibility.

[11] The Member further pointed out that the applicant had testified that while in China the PSB came two or three times and left a summons for her. In her PIF, however, she did not mention this summons. When asked about this, she explained that her brain didn't function very well because of her age and medical condition. However, the medical documentation she submitted in support of her application only referenced concerns about her pelvic region. Further, when she was asked why she didn't mention an arrest warrant in her PIF, she claimed that he had been afraid to report that piece of information when she arrived in Canada.

[12] The Member concluded that the presentation of the alleged summons would have been a clear indication that the authorities were interested in the applicant, and therefore could be

reasonably expected to be included in the PIF. As a result, the Member determined that based on a balance of probabilities, a summons was not issued for the applicant.

[13] Further, the Member concluded that overall, the applicant had embellished a claim for protection, and that the summons for herself and her parents that she entered into evidence are not genuine. The Member made a general finding that the applicant was not a credible and trustworthy witness.

[14] With regard to the pictures of the applicant participating in Falun Gong demonstrations in Toronto submitted in support of the application, the Member concluded that there is no persuasive evidence that the Chinese authorities are aware of this participation.

[15] As a result, the Member concluded that the applicant is not a Convention refugee or a person in need of protection.

Issues

[16] The applicant alleges that the issues are the following:

1. Did the Member err with respect to her conclusion that the applicant was not a credible and trustworthy witness?
2. Was the Member's decision rejecting the sur place claim reasonable?

Standard of review

[17] The standard of review applicable to a finding on credibility by the Board is reasonableness (*Wei v Canada (Citizenship and Immigration)*, 2012 FC 911 at paragraph 28 [Wei]; *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (FCA); *Elmi v Canada (Minister of Citizenship and Immigration)*, 2008 FC 773 at paragraph 21, and *Wu v Canada (Minister of Citizenship and Immigration)*, 2009 FC 929 at paragraph 17).

[18] In reviewing the Officer's consideration and treatment of evidence, the appropriate standard of review is reasonableness (see, for example, *YZ v Canada (Minister of Citizenship and Immigration)*, 2009 FC 749, [2009] FCJ No 904 at paragraph 22).

Analysis

1. *Did the Member err with respect to her conclusion that the applicant was not a credible and trustworthy witness?*

[19] The applicant disputes the Member's findings in regards to her credibility and the inconsistencies in her story. The Member's conclusion in regard to the details of the applicant's story and her credibility was based upon a series of inconsistencies in the applicant's testimony, stemming both from her PIF and the oral hearing in front of the Member. It must be remembered that it has been firmly established by this court that the RPD is best-positioned to make determinations on credibility (*Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315 (FCA); *Singh v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1272 at para 4).

[20] The Member placed some importance on the fact that the applicant did not mention the summons allegedly left by the PSB in her PIF. The applicant attempted to explain this omission by claiming that she was afraid to mention the existence of the summons when she first arrived in Canada. Regardless, refugee claimants who make material omissions from their PIF do so at their own risk. As Justice Pinard stated in *Jin v Canada (Minister of Citizenship and Immigration)* 2012 FC 595 [*Jin*] at paragraph 22, “The applicant had the obligation to include all relevant facts in his PIF and it is insufficient for the applicant to claim that his oral testimony was an elaboration”.

[21] Further, as Justice Russell stated in *Wei* at paragraph 59, referring to paragraph 11 of Justice Pinard’s decision in *Jin*, “[...] the RPD is entitled to draw negative inferences from omissions in an applicant’s PIF”, and as a result, it was certainly reasonable for the Member to base his credibility finding on the omission of the summons from the PIF.

[22] Justice Pinard concluded in *Jin* that the applicant’s failure in that case to mention the existence of an arrest warrant against him was a significant event that should have been mentioned in his PIF, and that as a result, the Board’s resulting negative inference was justified. The same logic applies in the case at bar. The summons was a significant fact and should have been mentioned by the applicant, and it was reasonable for the Member to make a negative credibility finding based at least partly on this omission.

[23] As a result, though the applicant may take issue with specific aspects of the Member’s credibility finding, because it is well-supported by a careful analysis of the applicant’s testimony,

it falls within a range of reasonable outcomes. Furthermore, as Justice Russell of this Court stated in *Alakozai v Canada (Citizenship and Immigration)*, 2009 FC 266 at paragraph 36, referring to the decision of the Federal Court of Appeal in *Sellan v Canada (Minister of Citizenship and Immigration)* 2008 FCA 381, a negative credibility finding by the RPD is determinative of the claim. As a result, it was not necessary for the Member to carry out a separate analysis under section 97 of *IRPA*. The negative credibility finding was sufficient to dispose of the applicant's claim.

2. Was the Member's decision rejecting the sur place claim reasonable?

[24] The Member's conclusion that there was no persuasive evidence to suggest the Chinese authorities were aware of the claimant's participation in Falun Gong demonstrations is reasonable in light of the fact that her sur place claim was based only on her attendance at an event in a park involving a couple of hundred people. Photographs of participating in a Falun Gong event do not elevate the claim to a sur place claim: see *Jin*, cited above, at paragraph 20.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is dismissed; and
2. No question is certified.

"Peter Annis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3025-13
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