

Federal Court



Cour fédérale

Date: 20170519

Docket: IMM-4882-16

Citation: 2017 FC 519

Ottawa, Ontario, May 19, 2017

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

YONGQIANG ZHU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for leave and judicial review under section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the “Act” or “IRPA”) of the decision of the Refugee Protection Division (“RPD”), dated November 7, 2016, wherein the RPD determined that Yongqiang Zhu (the “Applicant”) was neither a Convention refugee nor a person

in need of protection under sections 96 and 97 of the IRPA on the basis that the Applicant was not credible.

II. Background

[2] The Applicant is a citizen of China, born on December 4, 1994. He alleges that he is a farmer with a limited education from Hebei Province, China. On January 7, 2014, the Applicant states that he was introduced to the practice of Falun Gong by a friend Li, Yongqi and that he thereafter became a practitioner along with his friends Zhu, Hongwei and Zhu, Hongtao.

[3] On February 18, 2016, the Applicant's Falun Gong practice group was raided by the Chinese Public Security Bureau ("PSB"). The Applicant was not at practice that day, and allegedly received this information from Zhu, Hongwei. As a result, the Applicant went into hiding. That night, PSB officers allegedly went to the Applicant's home.

[4] On July 5, 2016, the Applicant exited China with the assistance of a snakehead and took a plane to Vancouver. The same day that he landed in Vancouver, the Applicant flew to Toronto. On or about July 19, 2016, the Applicant's visa was cancelled because a member of the group with whom he was travelling, according to his visa, made a refugee claim. On or about August 8, 2016, the Applicant also made a claim for refugee protection in Canada, based on fears that he will be arrested, incarcerated, and physically harmed by the PSB, should he be returned to China, because he is a Falun Gong practitioner.

A. *The Decision*

[5] The RPD held that the Applicant is neither a Convention refugee nor a person in need of protection, and rejected the Applicant's claim based on a number of negative credibility findings.

In particular, the RPD found that the claim had no credible basis for the following reasons:

- a) The Applicant exited from China via the Beijing airport, travelling on his own passport and with a boarding pass issued in his name, while allegedly wanted by the Chinese Authorities;
- b) The Applicant was unable to provide any documentation of the alleged visits to his parents by the PSB;
- c) The Applicant did not claim refugee protection upon his arrival at the Toronto Airport, instead waiting over a month to make his claim;
- d) In 2013, the Applicant misrepresented himself in a United States visa application.
- e) The Applicant's Falun Gong practice details were not compelling and there was no evidence tendered to support his claims of practicing Falun Gong in China or Canada.

[6] In light of the negative credibility findings against the Applicant, the RPD held that the cumulative effect undermined the credibility of the Applicant in general. The RPD concluded that the Applicant was not a credible or trustworthy witness, and that the lack of general credibility extended to all relevant aspects of his testimony. Further, there were no witnesses called and there were no witness testimonials tendered.

III. Issue

[7] The only issue is whether the credibility findings made by the RPD are reasonable.

IV. Standard of Review

[8] The applicable standard of review is reasonableness (*Diaz v Canada (Citizenship and Immigration)*, 2016 FC 1343 at para 10 [*Diaz*]).

[9] I find that the credibility findings made by the RPD are reasonable, pursuant to section 107(2) of the IRPA. For the reasons below, the application is dismissed.

V. Analysis

A. *Ability to exit China via Beijing Airport*

[10] The RPD drew a negative credibility inference from the Applicant's claim that he was wanted by the PSB at the time that he exited China, because the evidence submitted by the Applicant showed that he departed China via Beijing airport using a genuine passport issued in his own name.

[11] The Applicant submits that the RPD erred in drawing a negative inference based on his ability to exit China using his own genuine passport. The Applicant relies upon jurisprudence from the Court for the proposition that there is nothing implausible about a person, who is wanted by the PSB, being able to exit China on his or her own genuine passport, in situations where the appropriate official was bribed: see *Zhang v Canada*, 2008 FC 533 [*Zhang 2008*].

[12] The Applicant claims that he travelled with the snakehead in a group with ten other people; however, the Applicant stated that he knows nothing about the ten other travellers and that he did not ask any of them about their backgrounds, despite the fact that they were all travelling to Toronto together.

[13] The Applicant also could not provide any details about what happened with his passport at the check-in counter, security screening, or customs. He merely stated that he did not observe whether or not his passport was scanned at the check-in counter to receive his boarding pass, similarly he did not see the security agent scan his passport. At the customs check point, the Applicant states that he presented his documents to the customs agent but does not remember what they did with the documents. The Applicant did not recall the snakehead directing him to a specific agent. Further, the only conversation that he could remember overhearing between the snakehead and any airport official was a discussion he believed to be about liquid limits for air travel.

[14] The RPD was cognizant of the fact that a snakehead could make the requisite arrangements, including bribes, in order to successfully pass through Beijing airport with a person who is wanted by the PSB. However, the Applicant provided no evidence or testimony regarding special procedures or methods employed by the snakehead to enable the group to evade airport security measures; and, by his own account, he followed a generally standard boarding procedure, as outlined in National Documentation Package. Further, the RPD concluded that it was reasonable to infer, from the fact that the Applicant's boarding pass was in his own name, that the Applicant's passport had been scanned, so that his boarding pass could be

issued, and that his travel would be subject to detection by the authorities. Base on all the above, the RPD held that it was appropriate to draw a negative credibility inference.

[15] I find that the RPD's decision was reasonable. While the Federal Court's jurisprudence is mixed on the issue of exiting China under one's own identity while being wanted by authorities, the circumstances here are more similar to cases such as *Sui v Canada*, 2016 FC 406, and *Ma v Canada*, 2015 FC 838, where the claimants' allegations were not found credible. Further, the absence of a concrete explanation as to how the Applicant managed to evade the security measures at Beijing airport, distinguishes this case from *Zhang 2008*, above.

[16] I agree with the Respondent that the RPD carefully considered the evidence and reasonably drew a negative credibility finding based on the Applicant's claim and the evidence.

B. *Absence of summons from the PSB*

[17] The RPD also drew a negative credibility inference upon the Applicant's evidence that PSB officers attended his parents' home on four occasions but did not leave any documentation to indicate their interest in him.

[18] The Applicant argues that it was unreasonable for the RPD to draw a negative credibility inference based on this part his claim, because the RPD acknowledged that, at the relevant time, the practice of leaving a summons with family members was inconsistent in China. The RPD inferred that a summons would have been left, based upon the number of PSB visits to the

Applicant's parents' home. However, there are some cases where the Court found as a fact that the PSB in different regions may have different norms regarding when they leave summonses.

[19] The RPD relied upon the Response to Information Request, dated October 20, 2015, regarding Regulations on summonses to inform the finding that it was not credible that the PSB would visit the Applicant's parents four times and not leave a written summons. While acknowledging that there can be inconsistencies in the practice of issuing written summonses to family members, the RPD found that, in this case, it was unlikely that the PSB would not leave any documentary evidence whatsoever.

[20] In assessing the sworn testimony of an applicant, the RPD is entitled to consider its plausibility and to apply common sense and rationality (*Ye v Canada*, 2014 FC 1221 at para 29; *Su v Canada*, 2015 FC 666 at para 11 [*Su*]). I find that it is reasonable, in the context of the surrounding evidence—in particular, the Applicant's exit from China using his own passport—for the RPD to have found a lack of credibility given the absence of PSB documentation.

C. *The Applicant's delay in making a refugee claim*

[21] The RPD drew a negative credibility inference upon the Applicant's evidence that he fled China in fear of arrest, imprisonment, and physical harm as he did not claim for protection immediately upon his arrival at either the Vancouver or Toronto airports.

[22] The Applicant argues that this inference is unreasonable because the delay in making the claim was brief (approximately 34 days). Moreover, the Applicant argues that he did not make a

refugee application immediately upon entering Canada because he did not know that he could make a refugee claim to stay in Canada permanently. However, after being questioned about why he and his family would spend a large sum of money to hire a snakehead and obtain a fraudulent visa, the Applicant admitted that he came to Canada with the hope that the Canadian government would protect him. Further, he stated that the friend, in whose home he had been hiding in China, told him that Canada had a refugee system and that the Canadian government would help people such as him.

[23] Given the Applicant's contradictory testimony regarding what he did and did not know about refugee claims in Canada, and when he knew such information, I find that the RPD's decision to draw a negative credibility inference is reasonable.

D. *The Application for the US Visa*

[24] The RPD drew a general negative credibility inference upon the Applicant's evidence because he attempted to obtain a US visa through fraudulent means in 2013, without a compelling reason for the misrepresentation.

[25] The Applicant submits that it was unreasonable for the RPD to make this negative credibility inference because the misrepresentation on the US visa has nothing to do with the issue before RPD. The Applicant asserts that "a finding that a refugee claimant is or is not credible is not determinative of the question of whether that claimant is a convention refugee." Further, the Applicant relies upon the case *Guney v Canada*, 2008 FC 1134 [*Guney*], for the

proposition that the fact that a witness has been caught in a lie is insufficient to discredit all of his or her evidence, where the evidence is otherwise plausible.

[26] I do not find that the RPD applied this general negative credibility finding to discredit otherwise plausible evidence or to simply dismiss the remainder of the Applicant's testimony. Unlike the situation in *Guney*, above, the evidence with regard to the Applicant's Falun Gong practice, persecution, and flight is not "otherwise plausible and consistent" (*Guney* at para 17). The RPD did not disregard any of the other evidence because of the fraudulent US visa application. This is a case where evidence of a willingness to make misrepresentations to immigration officials can cast doubt on the Applicant's testimony, particularly where there is no corroborating evidence.

E. *The Applicant's Falun Gong Practice*

[27] The RPD found that the Applicant's evidence regarding his practice of Falun Gong was not persuasive in establishing that he is a genuine Falun Gong practitioner.

[28] The Applicant argues that the RPD wrongly engaged in a microscopic and stringent examination of the Applicant's knowledge of Falun Gong. Further, the Applicant asserts that it was unreasonable for the RPD to make a negative finding based upon the Applicant's failure to obtain a copy of *Zhuan Falun*, the central text for Falun Gong practitioners, as he is a person of limited education, who would not understand most of the text. The Applicant also contends that it is unreasonable that the RPD did not give reasons for rejecting the Applicant's explanations of why he does not own a copy of *Zhuan Falun*.

[29] The RPD determined that the Applicant's reasons for joining Falun Gong, which he knew was illegal and could lead to persecution, lacked cogency. Further, he could not describe why any of the principles of Falun Gong had personal appeal to him and could only discuss the benefits of Falun Gong practice in a very general manner. The RPD also found that the Applicant's failure to obtain a copy of *Zhuan Falun*, once in Canada, due to an apparent lack of effort on his part, detracted from his credibility that he was a genuine practitioner. Although, the RPD did not give explicit reasons for rejecting the Applicant's explanation of why he does not own a copy of *Zhuan Falun*, it can be inferred from the RPD's reasons that a genuine practitioner—who was coming to Canada, a place where the practice of Falun Gong is legal, to study and practice Falun Gong—would have made efforts to obtain a copy of the text so that he could further his understanding.

[30] However, certain of the Respondent's submissions on this issue appear to be from a different case. In one instance, the Respondent refers to the Applicant as "her", and makes reference to a story about the Applicant fleeing the PSB raid, and hiding in a field.

[31] Nevertheless, notwithstanding the Respondent's misstatements referred to above on this issue, I find that the RPD made a reasonable finding that the Applicant is not a genuine Falun Gong practitioner. In particular, I find that the lack of corroborating evidence and the Applicant's apparently disinterest in obtaining a copy of *Zhuan Falun*, despite his testimony that he is here in Canada because he wants to practice Falun Gong and improve his life, supports a lack of credibility. In any event, the other credibility findings by the RPD are cogent and determinative.

F. *Refugee Sur Place*

[32] The RPD considered whether the Applicant's alleged participation in Falun Gong in Canada has come or will come to the attention of the Chinese authorities and whether the Applicant will face more than a mere possibility of persecution as a result (*Liu v Canada*, 2014 FC 972 at para 8). The RPD concluded that because there is insufficient evidence to show that the Applicant is a Falun Gong practitioner in Canada, it follows that there is insufficient evidence to establish that the Chinese authorities will take an interest in the Applicant because of his alleged Canadian Falun Gong activities. I agree.

[33] Based upon the evidence before me, I find that the RPD's decision was reasonable.

JUDGMENT in IMM-4882-16

THIS COURT'S JUDGMENT is that

1. The application is dismissed.
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4882-16

STYLE OF CAUSE: YONGQIANG ZHU v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 18, 2017

JUDGMENT AND REASONS: MANSON J.

DATED: MAY 19, 2017

APPEARANCES:

Mr. Nkunda I. Kabateraine FOR THE APPLICANT

Ms. Suzanne M. Bruce FOR THE RESPONDENT

SOLICITORS OF RECORD:

Nkunda I. Kabateraine FOR THE APPLICANT
Barrister & Solicitor
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario