

Federal Court



Cour fédérale

Date: 20181023

Docket: IMM-358-18

Citation: 2018 FC 1064

Ottawa, Ontario, October 23, 2018

PRESENT: THE CHIEF JUSTICE

BETWEEN:

SIHUA JIANG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Ms. Jiang is a citizen of the People's Republic of China.

[2] She claimed refugee protection in Canada based on her fear of harm at the hands of the Public Security Bureau [**PSB**] in China. She asserts that the PSB is searching for her and will

arrest her if she returns to China, because she is a member of the Church of Almighty God, which is an illegal religion in that country.

[3] Ms. Jiang's refugee claim was rejected by the Refugee Protection Division [**RPD**] of the Immigration and Refugee Board of Canada [**IRB**]. Her appeal to the Refugee Appeal Division [**RAD**] was unsuccessful.

[4] Ms. Jiang submits that, in rejecting her appeal, the RAD erred by:

- i. failing to hold an oral hearing, after it raised new credibility concerns regarding the PSB summons that she tendered in support of her application;
- ii. finding that she would not have been able to exit China on her own passport if she had been wanted by Chinese authorities;
- iii. finding that the PSB's summons and other corroborating documents were not genuine;
- iv. determining that she was not a member of the Church of Almighty God; and
- v. rejecting her *sur place* claim.

[5] For the following reasons, this Application will be dismissed.

II. Background

[6] For the present purposes, the relevant background facts are set forth in the following summary provided by the RAD:

The Appellant alleged before the RPD that she was introduced to the Church of Almighty God by her aunt in October 2015 because she was suffering from depression. She began to worship with a group at her aunt's home in January 2016, but did not attend regular church services because her aunt believed that she was too young. The Appellant helped the group leader and her aunt, who was the co-leader, to design and print religious materials from her computer.

The Appellant's aunt and the group leader were arrested on March 19, 2016, while the Appellant was visiting her grandmother. She learned from her cousin that the PSB also want [*sic*] to arrest her. Her parents were questioned by the PSB who ordered the Appellant to report. When she failed to report a summons was issued and left with her mother on March 21, 2016. The Appellant went into hiding. A smuggler was hired to assist her in leaving the country. The PSB is still looking for her, and her aunt and the other practitioner are still in detention.

III. The Decision Under Review

[7] Before the RAD, Ms. Jiang raised the four issues identified at subparagraphs 4(ii) – (v) above, as well as an additional issue that is not relevant to the present Application.

[8] Regarding her ability to exit China using her own passport, the RAD conducted its own review and assessment of the evidence, including Ms. Jiang's assertion that a smuggler she had hired to assist her had bribed customs officials. In brief, the RAD found that assertion to be not credible, in part because it was not substantiated in any way, and in part because it was

inconsistent with the documentary evidence on the record. The RAD therefore upheld the RPD's rejection of that assertion.

[9] With respect to the alleged summons and other corroborating documents tendered by Ms. Jiang, the RAD again upheld the RPD's adverse credibility findings. In the course of doing so, it relied on additional reasons, over and above those identified by the RPD, for reaching its conclusion. In addition, it found that in tendering a fraudulent document in support of her claim, Ms. Jiang undermined her general credibility and the credibility of the other documents she had submitted in support of her claim.

[10] Concerning the authenticity of her religious beliefs, the RAD acknowledged that Ms. Jiang had some superficial knowledge about the Church of the Almighty God. However, it agreed with the RPD that this did not overcome various concerns that had been identified in this regard. After reviewing the record, it saw no reason to interfere with the RPD's findings on these points and in respect of the credibility concerns that it identified in relation to her testimony. The RAD observed that the RPD had a meaningful advantage in making its credibility findings, and that therefore those findings warranted deference. The RAD added that its conclusion regarding the authenticity of Ms. Jiang's religion was further supported by its findings on the issues, discussed at paragraphs 8 and 9, immediately above.

[11] Finally, the RAD rejected Ms. Jiang's *sur place* claim, after finding that certain documentation she had provided merited little weight, and after concluding that she had not

established on a balance of probabilities that her Church of Almighty God activities in Canada had brought her to the attention of Chinese authorities, or would be likely to do so in the future.

IV. Standard of Review

[12] The procedural fairness issue that Ms. Jiang has raised is reviewable on a standard of correctness: *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339, at para 43.

[13] The other issues that Ms. Jiang has raised are reviewable on a standard of reasonableness: *Dunsmuir v New Brunswick*, 2008 SCC 9, at paras 51-53 [*Dunsmuir*]; *Abdulmaula v Canada (Citizenship and Immigration)*, 2017 FC 14, at para 8.

[14] In assessing whether a decision is reasonable, the focus of the Court is generally upon whether the decision is appropriately intelligible, transparent and justified. In this regard, the Court's task will be to assess whether it is able to understand why the decision was made and to ascertain whether the decision falls "within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law": *Dunsmuir*, above, at para 47; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, at para 16. A decision that is "rationally supported" will generally fall within this range: *Halifax (Regional Municipality) v Nova Scotia (Human Rights Commission)*, 2012 SCC 10, at para 47.

V. Analysis

A. *Did the RAD err by failing to hold an oral hearing?*

[15] Ms. Jiang submitted that the RAD erred when it drew new adverse credibility inferences and made new findings concerning the authenticity of the summons that she had tendered in support of her claim, without convening an oral hearing or providing her with an opportunity to make submissions in respect of those new inferences and findings.

[16] I disagree. The issue of the genuineness of the summons was squarely in front of the RAD. That issue was specifically raised at paragraphs 49-54 and 70-72 of Ms. Jiang's written submissions to the RAD. This distinguishes the facts of the present case from the facts in *Husian v Canada (Citizenship and Immigration)*, 2015 FC 684, at paras 9-10, relied upon by Ms. Jiang.

[17] Issues that are rooted in, or are components of, an existing issue are not "new issues." Rather, "[genuinely] new issues are legally and factually distinct from the grounds of appeal raised by the parties": *R v Mian*, 2014 SCC 54, at paras 30 and 33. Although the RAD in this case raised some additional factual concerns with respect to the summons in question, the basic issue concerning the genuineness of the summons was legitimately before the RAD: *Lin v Canada (Citizenship and Immigration)*, 2017 FC 1175, at para 22. It was therefore entitled to fully explore that issue without convening an oral hearing.

B. *Was it unreasonable for the RAD to conclude that Ms. Jiang would not have been able to exit China on her own passport if Chinese authorities had been seeking to arrest her?*

[18] Ms. Jiang submitted that the RAD's conclusion on this issue was inconsistent with this Court's jurisprudence and unreasonable on the facts.

[19] With respect to this Court's jurisprudence, Ms. Jiang relies on *Huang v Canada (Citizenship and Immigration)*, 2017 FC 762 [**Huang**] and various cases discussed in that decision. However, those cases are distinguishable.

[20] In the present case, Ms. Jiang relied on a bare assertion that the smuggler she had hired to assist her to escape from China told her that she "had bribed customs so I would be able to leave smoothly." Among other things, the RAD observed that it was unclear from Ms. Jiang's evidence how this was done.

[21] This contrasts with the various cases relied upon by Ms. Jiang. Among other things, in each of those cases, the applicant provided additional evidence to explain how she was able to leave China with a genuine passport. In some of those cases, the applicant explained in greater detail how she was assisted to exit China with a genuine passport, by one or more third parties: *Huang*, above, at para 68(c); *Sun v Canada (Citizenship and Immigration)*, 2015 FC 387, at para 13 [**Sun**]; *Ren v Canada (Citizenship and Immigration)*, 2015 FC 1402, at para 16 [**Ren**]; and *Yao v Canada (Citizenship and Immigration)*, 2016 FC 543, at para 14. In another case, the applicant's evidence was that the customs officer did not scan her passport or type anything into the computer, but merely stamped her passport: *Yang v Canada (Citizenship and Immigration)*, 2016 FC 543, at para 12. In yet another case, the RAD was found to have erred when it concluded that a large number of officials at the airport would have had to have been bribed, and that this was implausible: *Zhang v Canada (Citizenship and Immigration)*, 2008 FC 533, at para 5 [**Zhang**]. Moreover, in *Sun*, above, at para 13, the RPD's conclusion was found to be

inconsistent with other conclusions that it reached regarding the prevalent nature of bribery in China and the possibility that information may not be effectively shared among authorities.

[22] I note that *Zhang* and *Ren* were also distinguished by Justice Gagné in a recent case in which very general assertions, similar to those made by Ms. Jiang, were made by the applicant: *Li v Canada (Citizenship and Immigration)*, 2018 FC 877, at paras 14-21.

[23] Turning to the facts, Ms. Jiang took issue with the RAD's reliance on the Jurisprudential Guide TB6-11632 [**TB6-11632**], which she maintains is inconsistent with other information in the National Documentation Package.

[24] However, she did not explain how the facts in this case differ from those in TB6-11632, where the RAD thoroughly addressed the issue of whether a Chinese citizen who is being pursued by Chinese authorities is able to leave that country using a genuine passport: TB6-11632, at paras 9-36. In the absence of such an explanation, and after having reviewed the record in this proceeding, I am satisfied that it was not unreasonable for the RAD to have applied TB6-11632 to Ms. Jiang's situation.

[25] As this Court recently observed, these types of cases are fact driven and must be determined on the evidence that is adduced: *Yan v. Canada (Citizenship and Immigration)*, 2017 FC 146, at para 20.

[26] Unfortunately for Ms. Jiang, it was reasonably open to the RAD to find that the factual matrix set forth in TB6-11632 was similar to that which she had advanced, and to then rely on the analysis in that Jurisprudential Guide in finding that she could not have exited China in the manner that she alleged, if she had been wanted by the PSB: *Singh v Canada (Citizenship and Immigration)*, 2018 FC 561, at para 12. This is particularly so given the extensive references in TB6-11632 to the National Documentation Package, dated May 31, 2016, and to various decisions in which this Court has upheld findings that travelling unimpeded through Chinese exit controls while using a genuine passport is inconsistent with being wanted by Chinese authorities: *Zeng v Canada (Citizenship and Immigration)*, 2014 FC 1060, at paras 5(xi) and 32; *Cao v Canada (Citizenship and Immigration)*, 2015 FC 315, at para 19; *Su v Canada (Citizenship and Immigration)*, 2015 FC 666, at para 17.

[27] Parliament explicitly provided that the Chairperson of the IRB may identify decisions of the IRB as Jurisprudential Guides, after consulting with the Deputy Chairpersons, to assist members in carrying out their duties: *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], paragraph 159(1)(h). Pursuant to a document entitled *Policy Note regarding the identification of TB6-11632 as a RAD Jurisprudential Guide*, the Chairperson exercised that authority. Among other things, that document states that “RPD and RAD members are expected to apply Jurisprudential Guides in cases with similar facts or provide reasoned justifications for not doing so.”

[28] Having regard to paragraph 159(1)(h) of the IRPA, this approach is not unreasonable. Among other things, it can assist to increase consistency, and therefore certainty and

predictability, in the RAD's decision-making. In addition, the use of Jurisprudential Guides can assist to reduce the amount of time the RAD takes to issue decisions, and thereby reduce any anxiety experienced by refugee applicants and their families while they await the outcome of their appeals.

[29] In summary, the RAD's finding that Ms. Jiang would not have been able to exit China on her own passport if she had been wanted by Chinese authorities was not unreasonable. The same is true of the RAD's finding that the explanation provided by Ms. Jiang in this regard was not credible. The reasons provided by the RAD were sufficiently appropriately intelligible, transparent and justified to enable me to conclude that they were rationally supported and therefore fell "within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law": *Dunsmuir*, above, at para 47; *Halifax*, above, at para 47.

C. *Did the RAD err in finding that the PSB's summons and other corroborating documents were not genuine?*

[30] Given the finding that I have reached immediately above, it is not necessary to address this issue. That is because, in the course of finding that Ms. Jiang could not have left China on her own passport, the RAD found that she was not in fact wanted by the PSB. Given that those findings were not unreasonable, they are determinative of this Application, except with respect to the issues Ms. Jiang has raised in relation to her *sur place* claim, which is discussed in Part V.E. of these reasons below.

[31] I will simply pause to observe that I do not accept what I understand to be Ms. Jiang's proposition that, as a general matter, the authenticity of a document cannot be questioned based on a microscopic analysis. In my view, it may very well be reasonably open to the RAD or another decision maker to question the authenticity of a document based on very small or even microscopic differences between the document and an authentic counterpart. It is in the small or microscopic details where a forgery may well be exposed. Ultimately, whether such details provide a reasonable basis for a finding that a document is not authentic will turn on the facts of each particular case.

D. *Did the RAD err in finding that Ms. Jiang is not a member of the Church of Almighty God?*

[32] Having regard to my comments at paragraph 30 above, this issue is only relevant because of its link to the issue that Ms. Jiang has raised with respect to the RAD's treatment of her *sur place* claim. In the absence of the latter claim, I would have considered it unnecessary to address the issue of the RAD's treatment of Ms. Jiang's alleged membership in the Church of Almighty God.

[33] Ms. Jiang submitted that the RAD and the RPD erred in their assessment of her religious identity by focusing on the correctness of the answers she gave to questions that were posed to her, rather than by assessing the genuineness of her religious beliefs. She maintained that the testimony she provided regarding the religious pamphlets that she handed out, and regarding the differences between her religion and other religions, met the low standard of religious knowledge

established in the jurisprudence. She added that the RAD and the RPD further erred by failing to presume that her testimony was truthful.

[34] I disagree. After reviewing the record and listening to the recording of the proceeding before the RPD, the RAD found that Ms. Jiang's knowledge of her claimed religion was "superficial" and "vague", specifically in relation to which religious texts were the primary holy books of the Church of Almighty God. It also found that testimony she gave about the Lord's Prayer was inconsistent with the practice of the Church of Almighty God, as described by the RPD. Having made those findings, it found that the evidence she adduced to establish that she had handed out religious pamphlets in Canada seven or eight times, and had shared God's words in several conversations with other individuals, was not sufficient to demonstrate the genuineness of her alleged religion.

[35] In my view, it was reasonably open to the RAD to reach this conclusion, notwithstanding Ms. Jiang's young age (19) and the limited amount of time that she had allegedly practised her religion (only a few months). The conclusion reached by the RAD on this issue was appropriately justified, transparent and intelligible to enable me to conclude that it was rationally supported and therefore fell "within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law": *Dunsmuir*, above, at para 47; *Halifax*, above, at para 47.

[36] Given the adverse credibility finding that the RAD made regarding Ms. Jiang's claim that she was wanted by the PSB in China, she was no longer entitled to the benefit of the presumption

that her testimony on other issues was truthful: *Moossavi-Zadeh v Canada (Citizenship and Immigration)*, 2017 FC 365, at para 44; *Elfar v Canada (Citizenship and Immigration)*, 2012 FC 51, at para 4. In light of that adverse credibility finding, the RAD was also entitled to be skeptical about the reliability of the other evidence that Ms. Jiang had tendered regarding the genuineness of her belief in the Church of Almighty God. Stated differently, it was reasonably open to the RAD to consider such evidence to be insufficiently independent, objective and persuasive to establish the genuineness of Ms. Jiang's religious beliefs in the circumstances: *Canada (Citizenship and Immigration) v Sellan*, 2008 FCA 381, at para 3.

E. *Did the RAD err in rejecting Ms. Jiang's sur place claim?*

[37] Before the RAD, Ms. Jiang argued that the RPD had erred in its assessment of her *sur place* claim by failing to assess (i) her identity as practitioner of the Church of Almighty God in Canada, independently of her alleged religious activities in China, and (ii) the evidence that she had provided of her church activities, at least since she arrived in Canada.

[38] In the present application before this Court, Ms. Jiang alleged that the RAD committed the same errors. Stated differently, she alleges that the RAD failed to ask whether her activities in Canada have placed her at risk of harm upon her return to China.

[39] I disagree.

[40] The RAD explicitly addressed Ms. Jiang's submissions regarding the need to assess her religious activities in Canada independently of its assessment of her activities in China, and

regarding the need to then look at the consequences of those activities for her, should she return to China. It also addressed, albeit briefly, the evidence that she adduced in support of her *sur place* claim. That evidence consisted of letters from her fellow worshipers in Canada and photographs of her handing out flyers in Canada.

[41] With respect to Ms. Jiang's religious activities in Canada, the RAD's assessment was very brief. First, it observed that the evidence she adduced merited little weight in its assessment of the genuineness of her religious convictions. Given the adverse credibility findings that it had already made regarding the matters discussed in Parts V.B. and V.D. above, this observation was not unreasonable: See paragraph 36 above.

[42] Second, the RAD stated that there was no evidence in the record that Ms. Jiang's religious activities in Canada had come to the attention of the Chinese authorities. Ms. Jiang has not suggested otherwise. In the absence of any such evidence, the RAD found that Ms. Jiang had not established that her Church of God activities have or will bring her to the attention of Chinese authorities.

[43] Third, given its finding that Ms. Jiang is not a genuine practitioner of the Church of Almighty God, the RAD found that the likelihood that Ms. Jiang would practice that religion upon her return to China was minimal.

[44] Based on the above-noted findings, the RAD concluded that there is not a serious possibility that Ms. Jiang would be persecuted based on her alleged adherence to the teachings of the Church of Almighty God, should she return to China.

[45] Considering the very limited nature of Ms. Jiang's religious activities in Canada, and in the absence of any evidence to suggest a serious possibility of them coming to the attention of Chinese authorities, that conclusion was not unreasonable: *Gu v Canada (Citizenship and Immigration)*, 2017 FC 543, at paras 39-41; *Chen v Canada (Citizenship and Immigration)*, 2017 FC 650, at para 19. My conclusion in this regard is reinforced by the fact that the RAD reasonably found that Ms. Jiang is not a genuine Church of Almighty God practitioner. Although the RAD's assessment of this issue was very brief, it was sufficiently justified, transparent and intelligible to enable me understand how it had been reached and to determine that it was within a range of possible, acceptable outcomes in fact and in law.

[46] In essence, Ms. Jiang's *sur place* claim was based on her unsupported assertion that her religious activities in Canada would come to the attention of Chinese authorities, who would then persecute her upon her return to China. It was not unreasonable for the RAD to essentially find that this fell well short of the burden that she had to meet, namely, to demonstrate that (i) those activities would likely come to the attention of Chinese authorities, and (ii) there was a serious possibility that she would be persecuted by Chinese authorities upon her return to China, as a result of those activities.

VI. **Conclusion**

[47] Given the conclusions that I have reached in Part V above, this application will be dismissed.

[48] I agree with the position of counsel to the parties, expressed during the hearing of this application, that the facts and issues in this proceeding do not give rise to a serious question of general importance, as contemplated by paragraph 74(d) of the IRPA.

JUDGMENT in IMM-358-18

THIS COURT'S JUDGMENT is that:

1. This application is dismissed.
2. No question will be certified pursuant to paragraph 74(d) of the IRPA.

"Paul S. Crampton"
Chief Justice

APPENDIX 1 — Relevant Legislation

*Immigration and Refugee Protection Act,
SC 2001, c 27*

*Loi sur l'immigration et la protection des
réfugiés, LC 2001, ch 27*

Duties of Chairperson

Présidence de la Commission

Chairperson

Fonctions

159 (1) The Chairperson is, by virtue of holding that office, a member of each Division of the Board and is the chief executive officer of the Board. In that capacity, the Chairperson

159 (1) Le président est le premier dirigeant de la Commission ainsi que membre d'office des quatre sections; à ce titre :

(...)

(...)

(h) may issue guidelines in writing to members of the Board and identify decisions of the Board as jurisprudential guides, after consulting with the Deputy Chairpersons, to assist members in carrying out their duties; and

h) après consultation des vice-présidents et en vue d'aider les commissaires dans l'exécution de leurs fonctions, il donne des directives écrites aux commissaires et précise les décisions de la Commission qui serviront de guide jurisprudentiel;

(...)

(...)

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-358-18

STYLE OF CAUSE: SIHUA JIANG V THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 27, 2018

JUDGMENT AND REASONS: CRAMPTON C.J.

DATED: OCTOBER 23, 2018

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