

Federal Court



Cour fédérale

Date: 20190507

Docket: IMM-4938-18

Citation: 2019 FC 593

Toronto, Ontario, May 7, 2019

PRESENT: Mr. Justice Campbell

BETWEEN:

JUN ZHANG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The present Application for judicial review concerns a decision of the Refugee Protection Division (RPD), where the member found that the Applicant is not a Convention refugee or a person in need of protection. The Applicant is a citizen of China who claimed protection on the basis of a fear of persecution for his religious beliefs, as a Falun Gong practitioner, and on the basis of a fear of forced sterilization.

[2] The critical issue in the present Application is the RPD's findings regarding the Applicant's religious beliefs and practices. The RPD states that:

The claimant was asked a number of questions to test his Falun Gong knowledge. He was asked the nature of cultivation and how one cultivated. He responded that he did the exercises and he studied Fa. He was asked if he did anything else and he provided no further information.

The panel notes again, as it did in regard to the panel's questioning concerning the improvement in his medical condition after three months of practice, that Master Li indicated that merely doing the exercises and reading *Zhuan Falun* was not enough, that the claimant was required to live according to the principles of Falun Gong – truth, benevolence and forbearance – and that he was required as well to give up attachments such as jealousy which Master Li emphasizes.

The panel draws a negative inference from the claimant's inability to describe such basic Falun Gong teaching as cultivation. The claimant did provide information about "Giving Out Righteous Thought," although some of that information was vague. The claimant was also able to describe the meaning of karma and how one managed to move karma, a black substance, into virtue, a white substance.

The claimant was asked the purpose of exercise 3 and he was unable to provide an answer. He was further asked the purpose of exercise 4, but he failed to mention that it was used to rectify abnormal areas of the body.

[Decision, lines 181-220]

[3] The RPD concluded that:

[W]hile the claimant had some Falun Gong knowledge, it was far less than what could reasonably be anticipated from someone who allegedly had been a genuine practitioner for approximately seven years.

[Decision, lines 201-204]

[4] The Applicant submits that the RPD's findings on the Applicant's evidence about Falun Gong practice were overly microscopic and stringent. As well, the Applicant submits that the findings are based on the RPD's own subjective opinion about what the Applicant ought to have said in his testimony. In the Applicant's words, the RPD made a negative credibility finding simply because the Applicant failed to use "specific verbiage" when speaking about Falun Gong.

[5] In my view, the Applicant is correct. When reviewing the transcript, it is apparent that the Applicant answered the RPD's questions; however, he did not use the exact words that the RPD seemed to expect. The following passage is illustrative of this dynamic:

MEMBER: I want to ask you some questions about Falun Gong practice and theory. What does cultivation mean?

CLAIMANT: It (inaudible) to a higher level.

MEMBER: And how do you cultivate?

CLAIMANT: Do the five exercises at the same time to study Fa, the principal.

MEMBER: Anything else?

CLAIMANT: Reading the book, attending the law wheel.

[...]

MEMBER: Anything else?

CLAIMANT: I study, I also work.

[...]

MEMBER: Okay, you study and work; anything else in order to cultivate?

CLAIMANT: I go to these Master Li's lectures and I study the theory.

MEMBER: Well, Master Li says just studying Zhuan Falun and doing the exercises is not enough?

CLAIMANT: Sending righteous thoughts.

[6] In essence, the RPD is making a negative credibility finding against the Applicant for failing to specifically mention the principles of “truth, benevolence and forbearance” or “giving up attachments such as jealousy” in response to the Board Member’s questioning.

[7] A similar dynamic can be observed in the following passage from the transcript:

MEMBER: What is the purpose of the fourth exercise?

CLAIMANT: The meridians are opened and the whole body circulate well.

MEMBER: Anything else?

CLAIMANT: All the meridians are opened; the whole body circulate well.

MEMBER: Well, Master Li says that the law wheel is used to rectify abnormal areas in the human body.

CLAIMANT: Through the law wheel to adjust the abnormal condition of a person’s body.

MEMBER: That is just what I said. Can you recite the verse for the second exercise?

[Applicant recited verse]

INTERPRETER: It is correct.

[8] In the Decision, the RPD made a negative credibility finding against the Applicant for not using the exact language that he would have expected in response to his questioning about the purpose of the fourth exercise. In my view, this is unreasonable and contrary to the Supreme Court of Canada’s statement in *Ross v New Brunswick School District No 15*, [1996] 1 SCR 825

at paragraph 70, that it “is not the role of [the] Court to decide what any particular religion believes.”

[9] In *Zhang v Canada (Minister of Citizenship and Immigration)*, 2012 FC 503 at paragraphs 14 and 18, I stated the following about the pitfalls of questioning claimants about their religious practices and beliefs:

But a primary question to ask is: in fairness, what does it mean for a person to fail to answer a question about a certain detail of religious dogma? There are many possible answers: the question is not understood so the answer is not responsive; the person possesses a weak memory; a momentary lapse of memory has occurred; the answer was not learned no matter how much study has taken place; the answer is honestly held as correct whether or not it is thought to be so by the questioner; and so on. In my opinion, with these considerations in play, a failure means nothing of value. In the present case this point comes into full focus.

[...]

In essence, the practice of religious questioning allows an RPD member to be her or his own expert with respect to what questions to ask and what answers to expect in reply. As identified in the cases cited above, the vagary of this sort of highly subjective practice on the part of a decision-maker is certainly open to abuse. The practice purports to apply some form of stereotype in the mind of an RPD member of what a Christian should know. The determination that satisfactory answers are not supplied is, in essence, the making of an implausibility finding. That is, if the answers on Christian knowledge expected of a refugee claimant are not provided to an RPD member’s satisfaction, grounds exist for finding that it is implausible that the claimant is a Christian.

[10] As found in *Zhang*, the law with respect to the making of implausibility findings is very clear. Implausibility findings are required to follow a rigorous standard of proof as stated by Justice Muldoon in *Valtchev v Canada (Minister of Citizenship)*, [2001] FCJ No 1131 at paragraph 7:

A tribunal may make adverse findings of credibility based on the implausibility of an applicant's story provided the inferences drawn can be reasonably said to exist. However, plausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant. A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu.

[Emphasis added]

[11] In the present case, on the answers provided to the questioning conducted, the RPD made an implausibility finding that the Applicant could not have been practicing Falun Gong for seven years. Judged against the standard set by the references just stated, I find that this form of unsupported conjecture is unacceptable with respect to deciding on the genuineness of the Applicant's religious beliefs.

[12] For the reasons provided, with respect to the RPD's fact finding on the issue of the Applicant's claim of being Falun Gong, I find that the decision under review was made in reviewable error and, therefore, is unreasonable.

JUDGMENT in IMM-4938-18

THIS COURT'S JUDGMENT is that the decision presently under review is set aside, and the matter is referred back to a differently constituted panel for determination.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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