

Federal Court



Cour fédérale

Date: 20200609

Docket: IMM-4968-19

Citation: 2020 FC 676

Ottawa, Ontario, June 9, 2020

PRESENT: The Honourable Madam Justice Fuhrer

Docket: IMM-4968-19

BETWEEN:

SHENGFA ZHOU

Applicant

And

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant, Shengfa Zhou, is a citizen of the People's Republic of China from Guangdong province who alleges fear of persecution because he protested the expropriation of his family's property which led to him being detained by local authorities. Pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], the Applicant

challenges the decision of the Refugee Appeal Division [RAD] dated May 3, 2019 [RAD Decision] which dismissed the Applicant's appeal from the decision of the Refugee Protection Division [RPD] dated December 27, 2017 [RPD Decision] denying the Applicant's claim for refugee protection. The RAD agreed with the RPD that the Applicant, along with his father Yaoshen Zhou [Father] who subsequently was removed voluntarily as a party to the proceeding before this Court, were not credible and lacked subjective fear. The Applicant requests the RAD Decision be set aside and the matter be referred back for determination.

[2] In light of COVID-19 restrictions, and with the consent of the parties, this matter was heard by teleconference. For the reasons that follow, I dismiss this judicial review application.

II. Background

[3] In his Basis of Claim form and narrative, the Applicant alleged that in December 1998, the Chinese Government forcibly took over the family's land. By December 1999, his parents were notified that their agricultural hukou was forcibly changed to a non-agricultural hukou. As a result, they lost their land, dividend, and means of making a living, and were plunged into poverty.

[4] On September 9, 2014, the village officers posted a notice that their land and home would be taken over by the local government. They were directed to relocate before December 30, 2014. The Applicant found out that the government was supposed to compensate them 2,500 yuan per square meter, but they were given only 800 yuan per square meter.

[5] On September 11, 2014, the Applicant, his Father, and several other villagers went to the local township government to express dissatisfaction with the compensation. The township officials notified the local police, who allegedly arrested and detained the Applicant, his Father, and the others who complained.

[6] Between September 11-13, 2014, the local officials allegedly took turns “brainwashing” them. The officials told them that if they consented to the relocation, they would be released. The Applicant and his Father initially were unwilling to sign. The officials warned them, however, that two individuals from another village were sent to prison for six years for not complying with forced relocation. The Applicant alleged he was terrified the same would occur to him and thus, he and his Father signed the statement of consent.

[7] The Applicant borrowed all the money he could and found a snakehead to obtain visas. On March 12, 2015, Shengfa Zhou left China and arrived in Canada on March 14, 2015, via Los Angeles and Seattle. His Father left China on November 26, 2015 with the assistance of a smuggler and arrived in Canada on November 30, 2015, also via Los Angeles and Seattle. I note that Shengfa Zhou’s mother [Mother] made a refugee claim in 2001 based on China’s family planning policy. Though her claim was rejected, she still was living in Canada when the Applicant and his Father arrived in 2015.

[8] The Applicant and his Father claimed refugee status in July 2017, more than two years after arriving in Canada. As noted, their claims were rejected by the RPD and the RAD. After they obtained leave for judicial review, his Father was removed voluntarily from the application

by Order dated October 9, 2019. Shengfa Zhou remains the only named Applicant in this application.

III. RPD Decision

[9] Although only the RAD Decision is under scrutiny on this judicial review, the RPD Decision informs the Applicant's challenge of the RAD Decision and, therefore, a summary of the RPD Decision is warranted. The RPD determined that the Applicant and his Father "did not provide sufficient credible and trustworthy evidence to support their fear of returning to China". The credibility assessment involved several factors, which cumulatively led the RPD to reject the claimants' credibility, including:

1. **Residence:** There was confusion regarding which property was the subject of the alleged expropriation and where the claimants actually resided – 56 Nan Ling Dong Street [indicated on the Father's "household registration card"], 56 Dongnan Street [the residence address indicated on the Father's Resident Identity Card or RIC], or 8 Hebei Street [listed in the Father's Generic Form - where the Father allegedly lived at several points in time after he got married, and where he and the Applicant allegedly moved after the Father saw the notice of expropriation; on further questioning, the Father indicated only some furniture and belongings were moved from 56 Dongnan to 8 Hebei but that he always had lived at 56 Dongnan] - nor was the situation clarified well in the Father's oral testimony [described as "confusing and contradictory" in the RPD Decision];
2. **Relocation Deadline:** There was a discrepancy in the relocation deadline indicated in the Father's BOC narrative [stated as December 3, 2014] and the Applicant's BOC narrative [stated as December 30, 2014], although both claimants agreed in oral testimony that the deadline was December 30, 2014; the Father indicated in oral testimony the 0 after the 3 either was forgotten or it was a typographical mistake he didn't notice. The RPD was not satisfied with this explanation in light of other amendments to the Father's BOC narrative, finding it was "an afterthought on his part in order to bring his own story into alignment with the story provided by his son in his BOC narrative";
3. **Lack of Reliable Corroboration of Expropriation:** The Father learned of the expropriation because it was posted on the local government bulletin board; when asked if he made efforts to obtain a copy of the notice, he initially answered that he did not but later indicated he approached the local village authorities for a copy but was refused; the RPD viewed this testimony as exaggeration or embellishment of the Father's evidence, and

rejected two handwritten documents purported to be statements of fellow villagers – one as irrelevant [as it addressed the alleged violation of family planning policies in China] and the other as unreliable [as there was no verification concerning who wrote the statements – no identity documents were provided – no indication of when they were written, nor were the statements sworn or notarized];

4. Fear of Persecution: [a] The RPD determined, in light of negative credibility findings, the claimants' alleged fear of persecution was not well-founded objectively, and hence they would face no more than the mere possibility of persecution in China and, on a balance of probabilities, they would not face a risk to their lives if they were returned to China; [b] the RPD further determined [bold emphasis added] "[i]n the alternative, if [it] were to find that the claimants protested at the local village government office about the unfair expropriation of their land, [the RPD] **would** still find that their fears of persecution in China are not objectively well-founded" because there was no persuasive evidence that such a "low level protest" [described as "mild-mannered" by the Father] would be perceived as an act of political opposition or aggression aimed at destabilizing or overthrowing the local or national government, notwithstanding the claimants' arrest, detention and eventual release by the PSB. In this respect, the RPD found that the documentary evidence suggested that, even though demonstrations involving political dissent are suppressed, citizens hold thousands of protests annually, including against land expropriation; grievances taken to the state level are of greater concern than protests at the local level. Given the hypothetical manner in which this "alternative" finding was worded, I find the RPD's intention was to be comprehensive in its deliberations on the issue of fear of persecution but this was not its primary finding on this issue, nor was the rest of the RPD Decision truly in the alternative as suggested by the Applicant; in other words, grammatical constructs still matter;
5. Delay in Claiming Refugee Protection: The Applicant and his Father arrived in Canada on March 14, 2015 and November 30, 2015 respectively but they did not submit their claims for refugee protection until July 2017. The RPD found their responses to questions on this issue contradictory and inconsistent, bringing into question their subjective fear and credibility of alleged risk in China; on the one hand, they travelled here to seek protection and expressed fear of being returned to China, but on the other, they feared having their claims rejected [even though the Father's wife was still living in Canada 14 years after her refugee claim was rejected];
6. Departure from China: Notwithstanding his claim that he was wanted by Chinese authorities, the Father left China on his own passport, passing through various checkpoints at the Guangzhou International Airport where he was required to show his passport which was scanned and stamped by Chinese officials; he testified that as far as he was aware, at the time of his departure there was no outstanding warrant for his arrest or summons issued by the PSB, nor was he charged with any offences or crimes. The RPD found the reason the Father encountered no difficulties leaving China was that, on a balance of probabilities, he was not wanted by Chinese authorities; the Golden Shield databases, which contain extensive monitoring, tracking and control mechanisms, are not restricted to high-profile political dissidents; though not perfect and subject to bypass

through bribery, had the claimants been wanted as alleged, they would have been detected by authorities during screening at the airport.

IV. RAD Decision

[10] Noting that the Appellants did not submit any new evidence, that the correctness standard applied to appeals from the RPD [citing *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93], and that the RAD was to conduct its own analysis of the record to determine if the RPD erred, the RAD rejected the Applicant's and his Father's refugee claims and dismissed the appeal based on three broad findings regarding: (i) their place of residence in China; (ii) being wanted by the authorities/PSB; (iii) their delay in claiming refugee status in Canada.

A. *Residence*

[11] The RAD found the Appellants were not credible because they were inconsistent about their place of residence, as between their oral testimony and their Generic Form. The Appellants alleged that the government expropriated their property at 56 Dongnan Street. At the RPD hearing, when asked if he had always resided at that address, the Father responded that he had. The RPD pointed out that in his Generic Form, he listed 8 Hebei Street as his address. The Father explained that 8 Hebei was a property his father lived in and had given him, and that he did not know he had to include 56 Dongnan on the form. The RPD did not accept that explanation. The RAD found that the Appellants should have explained to the RAD why they did not put 56 Dongnan on their Generic Form.

[12] The RAD also found the Father was not credible because he contradicted himself about his place of residence during his testimony. At one point, he said he moved from 56 Dongnan to 8 Hebei. At another point, he said he actually continued to live at 56 Dongnan and had only moved some furniture and belongings to 8 Hebei. The RAD found that the Appellants should have provided submissions to explain this discrepancy, too.

[13] The RAD found the failure to explain these inconsistencies central, because 56 Dongnan is the property they allege was subject to expropriation by the government. In light of this general credibility conclusion, the RAD gave no weight to the Appellants' documentary evidence in support of their claims.

B. *PSB/Golden Shield*

[14] The RAD agreed with the RPD that it was not credible the Father could have left China on his own passport if, as claimed, he was wanted by the Public Security Bureau or PSB. The RAD found that the Golden Shield is comprehensive, includes a national policing database of people wanted by the authorities, and uses facial recognition and other tracking mechanisms. The RAD found the objective evidence about the Golden Shield and border controls in China compelling and convincing; hence, the RAD determined it was highly unlikely that the Father, if he truly were wanted, could have bypassed all of the security controls in place. The RAD was not satisfied with the Appellants' only submission on this issue, which was that it was not relevant because the RPD's conclusion on this matter was in the alternative. The Applicant's counsel advanced a similar argument in the judicial review hearing but as I found above [in the

last sentence of subparagraph 4 of paragraph 9], the only alternative finding made by the RPD was in respect of the alleged fear of persecution.

C. *Delay in Claiming*

[15] The RAD found that the Appellants lacked subjective fear because they did not claim refugee status until July 2017, even though the Applicant arrived in Canada in March 2015 and the Father arrived in November 2015. The RAD found that if the Appellants had been arrested and detained, and were wanted by the authorities, as they alleged, they would have sought refugee status upon their arrival in Canada. The Father said in the RPD hearing that he did not know how to make a refugee claim, but the RPD rejected this explanation. The RAD found that as the Mother made a refugee claim, the Appellants would have known how to make a claim. The RAD was not satisfied with the only explanation offered on appeal to the RAD, which was that the issue was not relevant because the RPD reached its conclusion on this matter in the alternative. Again, the Applicant's counsel advanced a similar argument in the judicial review hearing but as I found above, the only alternative finding made by the RPD was in respect of the alleged fear of persecution.

V. Issues

A. *What is the applicable standard of review?*

B. *Was the RAD's credibility analysis reasonable?*

VI. Analysis

A. *Applicable Standard of Review*

[16] Both parties' submissions were received prior to the seminal decision *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. The Supreme Court of Canada [SCC] adopted in *Vavilov* a rearticulated approach for determining the standard of review for reviewing the merits of administrative decisions. The starting point is that a rebuttable presumption of reasonableness is applicable in all cases: *Vavilov*, above at paras 10-11. I find none of the situations which rebut this presumption [summarized in *Vavilov*, above at paras 17 and 69] is present in the instant proceeding. As such, reasonableness is the applicable standard of review.

[17] When "...conducting a reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified": *Vavilov*, above at para 15. The SCC defined a reasonable decision owed deference as "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker": *Vavilov*, above at para 85. The SCC also found "it is not enough for the outcome of a decision to be *justifiable* ..., the decision must also be *justified* ...": *Vavilov*, above at para 86 [emphasis in original]. In sum, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility – and it must be justified in relation to the factual and legal constraints applicable in the circumstances: *Vavilov*, above at para 99. The party challenging the decision has the onus of demonstrating that it is unreasonable: *Vavilov*, above at

para 100. Finally, it bears mentioning, “[i]t is not the role of the Court on judicial review to re-weigh the evidence”: *Kadder v Canada (Citizenship and Immigration)*, 2016 FC 454 at para 15 [citing *Ellero v Canada (Public Safety and Emergency Preparedness)*, 2008 FC 1364].

B. *Reasonableness of RAD’s Credibility Analysis*

[18] I find the RAD’s negative credibility inference from the inconsistencies about the place of residence was not unreasonable. As the expropriation of 56 Dongnan was central to the Applicant’s and his Father’s claim, it is reasonable to expect that they would have listed this address on their Generic form given that they testified they had resided there. It also is reasonable to expect them to be consistent about whether they moved from 56 Dongnan to 8 Hebei, or whether they only moved some furniture and belongings to 8 Hebei. Further, as they were aware that the place of residence was a significant issue for the RPD that factored into its overall credibility findings, the Applicant and his Father should have done more to address it than simply submit or admit that testimony about the move from 56 Dongnan to 8 Hebei involved an apparent contradiction.

[19] Having concluded the property at 56 Dongnan was not the subject of expropriation by the government as alleged, the RAD gave no evidentiary weight to the Applicant’s supporting documentary evidence, such as the letter from fellow villagers that their land had been expropriated. A court may intervene if the tribunal fails to consider a piece of evidence that is critical and contradicts the tribunal’s conclusion: *Cepeda-Gutierrez v Canada (Minister of Citizenship & Immigration)*, [1998] ACF No 1425 at para 17; *Rahal v Canada (Minister of Citizenship & Immigration)*, 2012 FC 319 at para 39.

[20] In the case before this Court, however, the RPD analyzed these documents. As mentioned above in subparagraph 3 of paragraph 9 summarizing the RPD Decision, the RPD found the statements from other villagers about the alleged expropriation unreliable as there was no verification concerning who wrote the statements – no identity documents were provided - or when they were written, nor were the statements sworn or notarized. Moreover, none of the names of other villagers alleged by the Applicant and his Father in their BOCs to have been present at the local government protest was listed at the end of the letter. The RAD did not ignore these documents, but rather stated that it gave them “no weight”. More importantly, the Applicant and his Father failed to address the RPD’s concerns regarding this evidence on appeal before the RAD. As noted in *Ikeme v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 21 at para 20:

A general finding of a lack of credibility ... can extend to all relevant evidence provided by an Applicant (*Lawal v Canada (Citizenship and Immigration)*, 2010 FC 558). Findings based on implausibility of evidence should be only made in the clearest of cases (*Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7), but even if explanations given by an Applicant regarding this evidence can be plausible, the RAD is entitled to find otherwise (*Krishnapillai v Canada (Citizenship and Immigration)*, 2007 FC 563 [*Krishnapillai*] at para 11).

[21] Further, as noted in the cited paragraph in *Krishnapillai*, above at para 11 [bold emphasis added]:

... the mere existence of a reasonable explanation for an evidentiary inconsistency does not make the Board’s contrary finding patently unreasonable. **The same is true for the interpretation or weighing of evidence** by the Board. The fact that another inference was open to be drawn on the evidence does not mean that the Board’s evidentiary assessment was flawed.

[22] Because the Father was removed voluntarily from this judicial review application by Order dated October 9, 2019, the issue regarding the Father's ability to leave China is moot. I find that the issue is not irrelevant, however, in so far as the Applicant is concerned since both the Father and the Applicant alleged they used the services of a smuggler or snakehead to leave China and their counsel conceded that they were persons of interest to the authorities. Though the RPD focused on the Father and his oral testimony on the issue [as he was then the principal claimant], the ability of the Applicant also to pass undetected through security checkpoints at the airport was raised by counsel and considered by the RPD. On appeal, the RAD found the Father's allegation that he was wanted by the authorities when he left China not credible because he left on his own passport and was not detected by the Golden Shield. NDP Item 14.3 cites the Exit and Entry Administration Law of China, which came into force on July 1, 2013, and states:

Article 12. Under any of the following circumstances, Chinese citizens are not allowed to exit China:

- 1) Hold no valid exit/entry documents, or refuse or evade border inspection;
- 2) Are sentenced to criminal punishments, the execution of which have not been completed, or are suspects or defendants in criminal cases;
- 3) Are involved in unsettled civil cases and not allowed to exit China upon decision of the people's courts;
- 4) Are subject to criminal punishment for impairing border administration, or are repatriated by other countries or regions due to illegal exit from China, illegal residence or illegal employment, and the No-Exit-from-China period has not expired;
- 5) May endanger national security or interests, and are not allowed to exit China upon decision by competent departments under the State Council; or
- 6) Other circumstances in which exit from China is not allowed in accordance with laws or administrative regulations.

[23] The NDP evidence does not indicate clearly that the Father's and the Applicant's circumstances – a civil protest, resulting in them signing a statement of consent [to relocation] and being released from detention – would trigger gatekeepers at the airport to apprehend them. I disagree, however, that the RAD assumed, as submitted by Applicant's counsel, the Applicant and his Father were "criminal fugitives" [as per Article 12(2) above, for example]. The RAD found that the RPD conducted a thorough review and assessment of the documentary evidence concerning the *Golden Shield Project* and that "the PSB has access to a national policing database, which includes information about criminal fugitives and information on passports and exit and entry". The RAD also noted that "security officials have access to [PSB's] online database of citizens who have been convicted of crimes **or are wanted by the authorities** (also known as Policenet or the Golden Shield)" [bold emphasis added]. The Applicant's Father alleged he was wanted by the authorities but provided no corroborative evidence. Based on the preponderance of the country condition documentary evidence, the RPD did not accept the argument that only high-profile political dissidents would be monitored and hence low-level political dissidents like the Father and the Applicant [who alleged their protest, that resulted in their arrest and detention, was mild-mannered, small and non-violent] would not be detected; rather documentary evidence indicated "all citizens' exits from China are closely monitored", including through screening of passengers at airports. In my view, both the RPD and the RAD considered whether the Father, and by extension the Applicant, were wanted by authorities and whether, on a balance of probabilities, there was a record of them in the Golden Shield. I therefore find the RAD's concurrence, "[a]fter its own review and assessment of the evidence", with the RPD's findings on this issue was not unreasonable.

[24] I further find the RAD's conclusion on the Appellants' delay in claiming refugee status was not unreasonable. While delay is not determinative, it is an important factor in assessing credibility and subjective fear: *Huerta v Canada (Minister of Employment & Immigration)*, [1993] FCJ No 271 (FCA) at para 4. The RAD found that if, as alleged, the Appellants were wanted when they left China, they would have claimed refugee status before two and a half years had passed; moreover, they would have been aware of Canada's refugee system because the Mother made a claim before they did.

[25] Though the RAD did not make express findings on all the issues considered by the RPD, I find that the RAD reasonably considered and synthesized the evidence available to it to make the **necessary** findings [paraphrasing the following ruling of the Ontario Court of Appeal in *Welton v United Lands Corporation Limited*, 2020 ONCA 322 at paras 60-61]:

There is, to emphasize, no need to recite all of the evidence, even the irrelevant, or to refer to every argument made by every party, no matter how unhelpful: *R. v. R.E.M.*, 2008 SCC 51, [2008] 3 S.C.R. 3 at paras. 11-12, 35-57; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 128.

.... The task of a trial judge [or tribunal] is to find the golden mean, to "decant and simplify", to synthesize the evidence and make the necessary findings; ...

VII. Conclusion

[26] Having regard to the analysis above, I find that the RAD Decision is justified in relation to the factual and legal constraints applicable in the circumstances and that the Applicant has failed to meet the onus on him of demonstrating that it is unreasonable: *Vavilov*, above at paras 99-100. I therefore dismiss this judicial review application.

[27] Neither party proposed a serious question of general application for certification and I find that none arises.

JUDGMENT in IMM-4968-19

THIS COURT'S JUDGMENT is that: this judicial review application is dismissed;
there is no serious question of general application for certification.

"Janet M. Fuhrer"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4968-19

STYLE OF CAUSE: SHENGFA ZHOU v THE MINISTER OF CITIZENSHIP
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PLACE OF HEARING: OTTAWA, ONTARIO

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**REASONS FOR JUDGMENT
AND JUDGMENT:** FUHRER J.

DATED: JUNE 9, 2020

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