

Federal Court



Cour fédérale

Date: 20210525

Docket: IMM-7156-19

Citation: 2021 FC 490

Ottawa, Ontario, May 25, 2021

PRESENT: Madam Justice Pallotta

BETWEEN:

JIE GAO

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board. The RAD dismissed an appeal by the applicant, Ms. Jie Gao, and confirmed the decision of the Refugee Protection Division (RPD) that Ms. Gao is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] Ms. Gao is a citizen of China who alleges a fear of persecution by the Public Security Bureau (PSB) for her involvement in the Church of the Almighty God (the Church). Ms. Gao was invited by a friend to join the Church in May 2016, and in December 2016, with the approval of a Church mentor, she started attending underground meetings on a weekly basis. On March 10, 2017, the friend told Ms. Gao that the Church mentor had been arrested. Ms. Gao went into hiding and arranged for a smuggler to secure a Canadian visitor's visa based on false information. Ms. Gao arrived in Canada on May 18, 2017 and sought refugee protection.

[3] Although she was not wanted by the PSB at the time of her exit from China, Ms. Gao learned from her parents that the PSB attended her home on June 6, 2017 and demanded that Ms. Gao return to China and surrender herself. She also learned that two other members of the Church were arrested by the PSB, and others were still in hiding.

[4] In Canada, Ms. Gao found a Church of the Almighty God, and claims that she continues to practice her faith by praying at home and attending church every Sunday.

[5] The RPD rejected Ms. Gao's refugee claim on the basis of credibility. On appeal, the RAD found that the RPD had made unjustified credibility findings. Nonetheless, the RAD dismissed Ms. Gao's appeal on the basis that she failed to establish she is a genuine practitioner.

[6] Ms. Gao alleges that the RAD concluded, unreasonably, that there was insufficient evidence to support her religious profile as a genuine believer of the Church. Ms. Gao submits that the RAD's conclusion was not justified by intelligible reasons.

[7] Ms. Gao has not established that the RAD's decision is unreasonable, and accordingly, this application for judicial review is dismissed.

II. Preliminary Issue

[8] The respondent raises a preliminary issue regarding the affidavit filed in support of Ms. Gao's application, as the affidavit was sworn by a law clerk working with Ms. Gao's counsel. The respondent submits that Rule 10(2)(d) of *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 requires that an affidavit be filed with an application record. Ms. Gao did not file a personal affidavit.

[9] The respondent does not assert that the application should be dismissed on the basis of a deficient record, and the only alleged deficiency of the affidavit itself is that Ms. Gao would have been a more appropriate affiant, since she has knowledge of the facts underlying the application. The respondent submits that where an applicant does not file evidence based on personal knowledge, any alleged error must appear on the face of the record: *Moldeveanu v Canada (Minister of Citizenship and Immigration)* (1999), 235 NR 192 (FCA) at para 15.

[10] The affidavit attests that Ms. Gao made a claim for refugee protection, provides the dates of the hearing before the RPD, and attaches a copy of the appeal record filed with the RAD as an exhibit. The information in the affidavit is not contested, and it is not clear that Ms. Gao would have been a more appropriate affiant to introduce this particular evidence.

[11] In any event, during the hearing, counsel for Ms. Gao confirmed that the affidavit was not intended to provide any information that goes beyond the record. In view of the position of Ms. Gao's counsel, there is no need to rely on the affidavit. The certified tribunal record is in evidence, and Ms. Gao only asserts errors that appear on the face of the record.

III. Issue and Standard of Review

[12] The sole issue on this application is whether the RAD's decision is unreasonable, and in particular, whether the RAD's conclusion that there was insufficient evidence to support Ms. Gao's religious identity lacked justification and intelligibility.

[13] The parties agree that the applicable standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. In applying the reasonableness standard, the Court must ask whether the decision under review bears the hallmarks of reasonableness—justification, transparency and intelligibility—and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision: *Vavilov* at paras 91, 99.

IV. Analysis

[14] Ms. Gao submits the RAD erred in its assessment of her religious identity.

[15] First, Ms. Gao submits the RAD held her to an unreasonably high standard of religious knowledge about the tenets of the Church, contrary to jurisprudence that the level of religious

knowledge required to establish sincerity of belief is relatively low: *Zhang v Canada (Citizenship and Immigration)*, 2012 FC 503 at paras 12-14, 16-18; *Huang v Canada (Citizenship and Immigration)*, 2012 FC 1002 [*Huang*] at paras 14-15. The RAD found that Ms. Gao was able to identify the basic concepts of the Church, but that she could not elaborate on the concepts when asked to do so. Ms. Gao submits her ability to correctly identify the basic tenets of her faith ought to have been sufficient to establish her religious profile. Ms. Gao submits it was unreasonable for the RAD to conclude her answers should have been more precise in view of the number of Church meetings she attended. She also argues the RAD erred by weighing her testimony against its own misguided idea of what a person in her circumstances should know or understand: *Lin v Canada (Citizenship and Immigration)*, 2012 FC 288 at para 61.

[16] Second, Ms. Gao submits that the RAD's reasons lack intelligibility, as the RAD found her level of knowledge to be insufficient without explaining how it was insufficient, and without describing the level of knowledge that was expected. Ms. Gao submits the RAD's conclusion was supported by a single example of insufficient knowledge—that when she was questioned by the RPD, Ms. Gao was unable to elaborate on the idea that only believers will go to heaven. Ms. Gao argues that a finding that a religious claim is manufactured requires a high standard of proof, since it raises a question of intent to deceive: *Ren v Canada (Citizenship and Immigration)*, 2015 FC 1402 at para 23.

[17] Third, Ms. Gao takes the position that despite having acknowledged the core question to be the sincerity of Ms. Gao's faith, the RAD based its determination on religious knowledge. Ms. Gao submits the RAD failed to discuss or make findings on sincerity of belief in its reasons,

and failed to consider the evidence of her religious practice in China, including her induction into the faith, her underground church, and the reasons that caused her to flee China.

[18] Lastly, Ms. Gao submits that the RAD erred by giving little weight to a letter of support from a fellow member of the Church in Canada. Ms. Gao submits the RAD erroneously focused on the probative value of the letter as evidence of her religious knowledge, without adequately considering the statements about Ms. Gao's religious activities to assess the sincerity of her belief. Also, Ms. Gao submits the RAD erred in discounting the probative value of the letter because it was not from a Church leader and it was not as detailed as the RAD would have preferred. Ms. Gao submits the RAD ought to have considered the letter for what it said, not what it omitted.

[19] I am not persuaded that the RAD committed the errors alleged above.

[20] While the RAD should not adopt an unrealistically high standard or engage in a microscopic analysis of religious knowledge (*Huang* at paras 10-12), I am not satisfied that the RAD did so in this case. Rather, the RAD assessed Ms. Gao's religious knowledge and her involvement in the Church "within the context of objective evidence of the tenets and the workings of the Church of Almighty God." This evidence included the Church's strong norms of participation, a duty to proselytize, and a high level of commitment to attending service with prayers, hymns, readings from scripture, and a sermon. While Ms. Gao asserts that the RAD weighed her testimony against a misguided idea of what a person in her circumstances should know or understand, she provides no details regarding the allegedly misguided ideas, and she does not raise any error in the RAD's description of the characteristics of the Church. In my

view, the RAD's expectation that Ms. Gao should be able to elaborate on the basic tenets of the faith when asked to do so was justified, and it was open to the RAD to find Ms. Gao's knowledge to be inconsistent with her alleged religious profile as a member of this Church.

[21] Ms. Gao submits the RAD erred by failing to explain the information that it had expected; however, Ms. Gao misunderstands the nature of the RAD's finding. After reviewing the audio recordings of Ms. Gao's evidence at the RPD hearing, the RAD made a general finding that Ms. Gao was unable to elaborate on the basic concepts of the Church when asked to do so. The RAD had expected that Ms. Gao would be able to elaborate on the basic concepts of the Church, in response to questions asking for a further explanation of the concepts that she had raised. The respondent's memorandum filed in this proceeding references three segments of the audio recording where Ms. Gao was unable to elaborate on the idea of believers going to heaven, and unable to elaborate on the content of discussions at the Church meetings she had attended. I have listened to those segments of the recording, and in my view, it was open to the RAD to find that Ms. Gao was unable to elaborate. Ms. Gao did not direct this Court to testimony that would call the RAD's finding into question, or demonstrate that the RAD misunderstood or mischaracterized Ms. Gao's testimony before the RPD. As the party challenging the RAD's decision, Ms. Gao bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100) and she has not established any error in the RAD's general finding. On the facts of this case, I agree with the respondent that it was sufficient for the RAD to find that Ms. Gao's knowledge of the Church was superficial and cursory in nature, and it was not an error for the RAD to provide one example of Ms. Gao's insufficient knowledge.

[22] Furthermore, I am not satisfied that the RAD was focused on the wrong question. The RAD assessed Ms. Gao's knowledge in an effort to gauge the genuineness of her beliefs, which is not improper: *Zheng v Canada (Minister of Citizenship and Immigration)*, 2019 FC 731 at para 17, citing *Gao v Canada (Citizenship and Immigration)*, 2015 FC 1139 at para 26. In addition to the level of her religious knowledge, the RAD noted that Ms. Gao could name half of the 8 members of her Church group in China, even though she met with her Church group in China for an hour each week between December 2016 and March 2017. The members used spiritual names, and despite meeting more than 10 times, she only knew the spiritual names of 3 members.

[23] Turning to the letter of support from a fellow member of the Church in Canada, the letter is dated August 13, 2017 and states that the member "got to know" Ms. Gao on June 4, 2017. The letter consists of two statements: that Ms. Gao "has eagerly taken part in our church service; [praying], reading and trying to understand the words of God, and preaching the Gospel along with the fellow members", and that the member believes Ms. Gao is a devoted follower of the Church of Almighty God. The RAD assigned little weight to this letter because the letter could not establish Ms. Gao's religious knowledge by its bare attestation, and the letter had "little probative value" in terms of the genuineness of Ms. Gao's religious belief. The RAD explained that a letter from a leader of the Church that confirms she has been vetted for admission would have had greater probative value in light of the objective evidence, which indicates members must be vetted by a local leader in order to be admitted. A reviewing court must refrain from reweighing and reassessing the evidence considered by the decision maker, and absent exceptional circumstances, should not interfere with a decision maker's factual findings:

Vavilov at para 125; *Garcia v Canada (Citizenship and Immigration)*, 2020 FC 16 at paras 16-17. Ms. Gao has not established that the RAD erred in its assessment of the support letter.

V. **Conclusion**

[24] In my view, the RAD's decision is reasonable, and accordingly, this application for judicial review is dismissed.

[25] Neither party proposed a question for certification. In my view, there is no question to certify.

JUDGMENT in IMM-7156-19

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question for certification.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7156-19

STYLE OF CAUSE: JIE GAO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

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APPEARANCES:

Adam Wawrzekiewicz FOR THE APPLICANT

Alex C. Kam FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lewis & Associates FOR THE APPLICANT
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario