

Federal Court



Cour fédérale

Date: 20210510

Docket: IMM-1725-20

Citation: 2021 FC 417

Ottawa, Ontario, May 10, 2021

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

JUNJIE WENG

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 by the Refugee Appeal Division of the Immigration and Refugee Board of Canada [RAD] dated February 14, 2020 [the Decision]. In the Decision, the RAD dismissed the Applicant's appeal and confirmed the decision of the Refugee Protection Division [RPD] that the Applicant is not a Convention refugee or a person in

need of protection under ss 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] As explained in greater detail below, this application is allowed, because the RAD made a reviewable error in arriving at its finding that an arrest notice submitted by the Applicant in support of his claim was fraudulent.

II. **Background**

[3] The Applicant is a citizen of China. He claimed refugee protection in Canada based on a fear that the Public Security Bureau [PSB] in China is pursuing him because of his Christian faith.

[4] The Applicant's sister has mitochondrial encephalomyopathy. He alleges that, shortly after his sister was diagnosed, a friend noticed him struggling with her illness and invited him to join a Christian house church. He attended his first service in July 2016 and in September 2016 told his mother that he was attending the church. She wanted him to stop attending because she was nervous that Chinese authorities might arrest him. He persisted, and so she helped him obtain a student visa for Canada where he could practice Christianity freely.

[5] The Applicant left China in January 2017. He was baptized in a Canadian church in April 2017. The Applicant alleges that he subsequently learned from his mother that, on November 20, 2017, the PSB searched his home in China. He alleges that the PSB told his mother that they had arrested his friend and two other members of the house church the previous night while they

were distributing Christian leaflets. In December 2017, the Applicant made his refugee claim in Canada.

III. RPD Decision

[6] The Applicant's claim for refugee protection was rejected by the RPD in a decision dated December 20, 2018.

[7] The RPD had several concerns about the Applicant's credibility. It did not believe his explanation for why he waited over 10 months to claim refugee protection in Canada. The RPD also found that, because Chinese authorities monitor mail, the fact that the Applicant received documents intended to support his claim, mailed by his mother in China to his address in Canada in his own name, undermined the credibility of his allegation that he was wanted by the PSB.

[8] The RPD also drew a negative credibility inference from the fact that the Applicant only provided select pages from his passport in his claim. It did not believe his explanation that he lost his passport and that he reported it missing to the police, in part because he could not provide documentation of making the report. The RPD found that these negative credibility findings significantly diminished the weight of documents that the Applicant had provided to the RPD, such as a notice of the arrest of his friend and a list of items that the PSB allegedly confiscated from his home.

[9] The RPD then assessed the Applicant's faith and whether he had a *sur place* claim. The RPD drew a negative inference about the Applicant's credibility because his testimony about

state sanctioned churches in China was inconsistent with objective documentary evidence. The RPD noted that the Applicant testified about his faith and the Bible, but it found his ability to articulate concepts in Christianity insufficient to establish that he is a genuine practitioner.

[10] The RPD also considered several documents provided by the Applicant regarding the practice of his faith while in Canada, including a letter from his Reverend, but it placed little weight on these documents. Taking into account its negative credibility findings, the RPD concluded that the Applicant did not practice Christianity in China and found his practice of faith in Canada to be not genuine. It also found that there was no evidence that the Chinese government is aware of his practice of the Christian faith in Canada and that, should he return to China, he would not practice. In the alternative, given that the Applicant had little understanding of churches recognized by the Chinese government, the RPD found he could attend an officially recognized church.

IV. **RAD Decision**

[11] The Applicant appealed the RPD's decision to the RAD, challenging the RPD's credibility conclusions. He argued that the RPD erred in finding that he is not a genuine Christian, that he would be able to practice Christianity safely in China, and that he lacked subjective fear due to his delay in making his refugee claim. He alleged errors in the RPD's assessment of his evidence regarding his Christian faith, as well as its assessment of the arrest notice of his friend. The Applicant also submitted that the RPD erred by not considering his *sur place* claim.

[12] The RAD rejected these grounds of appeal. It agreed with the Applicant that the RPD did not carry out a proper assessment of the arrest notice of the Applicant's friend. However, the RAD conducted an independent analysis of the document and found it to be fraudulent, based on discrepancies between the document and sample arrest notices in the country condition documentation. The RAD agreed with the RPD that the Applicant receiving documents for his application in the mail under his name undermined the credibility of his claim that he is wanted by the PSB. The RAD also found the Applicant's explanation for how he lost his passport and why he did not have a record of reporting it missing to police to be vague and unconvincing. Therefore, the RAD determined that the RPD did not err in finding that the Applicant is not wanted by the PSB.

[13] The RAD then considered whether the Applicant is a genuine Christian. The RAD agreed with the RPD that the Applicant is not a genuine Christian. The RAD found that the Applicant showed general knowledge of Christianity, but when faced with questions about what his faith means to him, his answers were evasive or general and did not demonstrate genuine faith. Additionally, the RAD considered the Applicant's answers to questions as to why he cannot practice in an approved Christian church in China. It found that the Applicant's testimony suggested he had not given consideration to what he finds compelling about the Protestant faith over other Christian denominations, which the RAD found undermined his assertions about how important his faith was to him.

[14] The RAD found that the documentary evidence concerning the Applicant's faith, such as the Reverend's letter, at best showed the Applicant's attendance at church, not any meaningful

demonstration of faith. In light of its adverse credibility findings, the RAD concluded that the RPD was correct in finding that the Applicant had simply attended church to bolster his claim, not because of any true faith in Christianity.

[15] The RAD concluded that the RPD did not err in finding that the Applicant is not a genuine Christian. Given this finding and the finding that he is not of interest to the Chinese authorities, the RAD determined that he would not face a serious possibility of persecution if he were to be returned to China.

V. **Issues and Standard of Review**

[16] The Applicant raises the following issues for the Court's consideration:

- A. Whether the RAD erred in its analysis of the Applicant's credibility;
- B. Whether the RAD erred in making unreasonable credibility findings concerning the Applicant's documentary evidence; and
- C. Whether the RAD erred in failing to properly assess the Applicant's *sur place* claim.

[17] These issues are all reviewable on a standard of reasonableness.

VI. Analysis

[18] My decision to allow this application for judicial review turns on the RAD's analysis of the arrest notice submitted by the Applicant in support of his claim. The English translation of this document in the record bears the name "Notice of Arrest to the Family or Work Unit of the Arrested". The document purports to have been issued to the family of the Applicant's friend who was allegedly arrested by the PSB on November 19, 2017. The document gives the family notice of his arrest, the reason therefor, and the location of his detention.

[19] As noted earlier in these Reasons, the RPD found the arrest notice was of little value, based on other adverse credibility findings and the fact that fraudulent documents are readily available in China. The RAD concluded that the RPD had erred, as it had not carried out a proper assessment of the document. The RAD therefore undertook to correct that error by conducting its own independent analysis.

[20] The RAD's principal assessment of the arrest notice involved comparing it to sample arrest notices contained in a Response to Information Request [RIR] in the country condition evidence. The RAD noted the statement in the RIR that the format of notices of detention and arrest is basically the same across China and that the information that remains the same in the notices issued by different police stations is the address, the official seal of the PSB, the time of the arrest, and the type of crime. Against that backdrop, the RAD compared the arrest notice to samples in the RIR and concluded that it did not match any of those samples.

[21] The RAD identified three examples of discrepancies between the arrest notice submitted by the Applicant and the documentary evidence:

- A. A different number of characters in the second line of the document;
- B. The formatting of the document; and
- C. The fact that the time of arrest is not noted in the notice submitted by the Applicant.

[22] In support of his position that the RAD's analysis is unreasonable, the Applicant points to the fact that, contrary to that analysis and the statement in the RIR, some of the sample arrest notices in the RIR do not include a reference to the time of arrest. Indeed these appear to be the four samples specifically relied on by the RAD as notices, because they are notices intended to be handed to an arrestee's family.

[23] I agree with the Applicant's submission that the inconsistency between the RAD's analysis and the documentary evidence on which it relies raises concern about the intelligibility, and therefore the reasonableness, of the Decision. Of course, this component of the RAD's analysis is not the only basis on which the RAD concluded the arrest notice was a fraudulent document. The RAD also relied on the formatting of the notice and the number of characters in one of its lines. However, the inconsistency between the samples in the RIR and the statement in the RIR that arrest notices uniformly identify the time of arrest also raises potential concern about the reliability of the information in the RIR generally.

[24] Had the RAD adverted to the internal inconsistency in the RIR surrounding the time of arrest, it may have been less confident in relying on the RIR. Therefore, in my view, the issue the Applicant has identified undermines the reasonableness of the RAD's conclusion that the arrest notice was fraudulent.

[25] The RAD also identified other bases for its adverse assessment of the Applicant's credibility. However, as the Respondent acknowledges, the determination that the arrest notice was fraudulent was one of the key issues in the assessment of this claim. The Decision states that the severity of advancing a fraudulent document that goes to the heart of the Applicant's claim of being wanted by the PSB taints the rest of the Applicant's evidence.

[26] Therefore, the error identified in the RAD's analysis of the arrest notice represents a reviewable error requiring that this application for judicial review be allowed, the Decision set aside, and the Applicant's appeal from the RPD's decision referred to another panel of the RAD for redetermination. Also, given the effect of the reviewable error on the remainder of the analysis conducted by the RAD, it is unnecessary, and indeed of little value, for the Court to consider the other arguments raised by the Applicant with respect to the reasonableness of the Decision.

[27] Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-1725-20

THIS COURT'S JUDGMENT is that this application for judicial review is allowed, the Decision is set aside, and the matter is returned to a differently constituted panel of the RAD for redetermination.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1725-20

STYLE OF CAUSE: JUNJIE WENG v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE VIA TORONTO

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JUDGMENT AND REASONS: SOUTHCOTT J.

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