

Federal Court



Cour fédérale

Date: 20211005

Docket: IMM-4303-20

Citation: 2021 FC 1032

Toronto, Ontario, October 5, 2021

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

ZHIXIAO YU

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision [Decision] of the Refugee Appeal Division [RAD], confirming the Refugee Protection Division [RPD]'s denial of the Applicant's refugee claim as a Convention refugee or a person in need of protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] on the basis of credibility.

[2] For the reasons that follow, I find that the RAD did not err in its credibility finding and that the Decision was reasonable. The application is therefore dismissed.

I. Background

[3] The Applicant is a citizen of China who owned property in Yu Jia He Village. On September 25, 2017, the Applicant received a letter from the Wen Deng City Ze Tou Town Yu Jia He Village Committee Office providing notice that his property was being expropriated. The letter informed the Applicant that he would be compensated for the land, but at a price that the Applicant considered to be below market value.

[4] The Applicant asserts that he complained to the Yu Jia He Village Government in October 2017 and then again in November 2017. He states that he accused village officials of taking bribes and indicated that he would expose them for corruption. The Applicant contends that the village officials then accused him of harassment and threatened him.

[5] The Applicant asserts that his wife insisted that he leave the country because she feared the authorities would falsely charge him with a crime. The Applicant applied for a temporary resident visa that was received in late January 2018.

[6] The Applicant did not leave China immediately and spent Chinese New Year with his family. He obtained the assistance of a smuggler and arrived in Canada on March 3, 2018. He submitted his refugee claim in May 2018.

[7] The Applicant asserts that his home was demolished after he left China. He states that his wife told him that village officials were looking for him and that he must report to the local Public Security Bureau (PSB) office when back in China.

[8] On April 29, 2019, the RPD issued its decision, denying the Applicant's claim on the basis of credibility. The RPD found that:

- a) The Applicant's testimony regarding what happened, who he was with, and what was said at the October and November 2017 meetings was inconsistent and did not correspond with his Basis of Claim Narrative [BOC Narrative]. When asked about the inconsistencies, the Applicant did not have a reasonable explanation
- b) The Applicant's testimony about the date when he first learned from his wife that the PSB was pursuing him was inconsistent with his BOC Narrative and the Applicant could not explain the inconsistency.
- c) The Applicant's delay in leaving China after he obtained his visitor visa demonstrated that the Applicant did not have a subjective fear of persecution and further undermined his credibility.

[9] The RAD denied the Applicant's appeal on August 10, 2020, upholding the credibility findings of the RPD. The RAD concluded at paragraph 23 of its Decision:

[23] While it may be the case that the Appellant has his land expropriated in China, the supporting evidence linking that expropriation to threatened persecution by the state consists primarily of an unsworn statement by his wife. No summons or other objective evidence of official interest exists. When I weigh the problems with the Appellant's credibility against the limited evidence that he is being pursued by the PSB or the village authorities, I find, on a balance of probabilities, that he is not telling the truth.

II. Issues and Standard of Review

[10] The sole issue on this application is whether the Decision is unreasonable because the RAD erred in its credibility finding.

[11] The applicable standard of review for the Decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 25).

[12] In exercising the standard, the Court must determine whether the decision is “based on an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at paras 83, 85-86, and 99; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*] at paras 2, 31). While the reasonableness of a decision may be affected where a decision maker has fundamentally misapprehended or failed to account for the evidence before it, the role of the Court is not to reweigh or reassess the evidence absent exceptional circumstances (*Vavilov* at paras 125, 126; *Canada Post* at para 61). Nor should the Court conduct a *de novo* analysis, ask what decision it would have made, or ascertain a range of possible conclusions (*Vavilov* at para 83).

[13] A reasonable decision bears the hallmarks of justification, transparency, and intelligibility (*Vavilov* at para 99).

III. Analysis

A. *Inconsistencies in the Applicant's evidence*

[14] The Applicant argues that the RAD placed too much emphasis on the inconsistencies in the Applicant's testimony instead of considering it contextually in light of the Applicant's background and the full scope of the testimony given. The Applicant asserts that when the overall testimony is considered it is consistent with the BOC Narrative.

[15] The Respondent asserts that the inconsistencies are central to the basis for the Applicant's refugee claim and therefore it was reasonable for the RAD to find the inconsistencies to be material and determinative of the Applicant's credibility.

[16] As noted by Justice Grammond in *Olajide v Canada (Citizenship and Immigration)*, 2021 FC 197 [*Olajide*] at paragraphs 11-12, assessing credibility is a delicate task involving the consideration of a number of factors, including internal consistency and consistency with previous statements. Where claimants undergo difficult and sometimes traumatic events giving rise to a well-founded fear of persecution, it is assumed that facts will be remembered accurately and that the claimant will provide a complete and consistent account at several stages of the claim process. However, witnesses are human beings and will not be held to a standard of perfection.

[17] Minor contradictions on trivial or peripheral matters are not sufficient to support a negative credibility finding (*Olajide* at para 13; *Lawani v Canada (Citizenship and Immigration)*),

2018 FC 924 [*Lawani*] at para 23; *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 [*Rahal*] at para 43). However, the accumulation of contradictions or inconsistencies may give rise to a negative credibility finding, particularly where they arise from the claimant's own testimony (*Rahal* at para 43) or pertain to crucial elements of the claim (*Lawani* at para 22).

[18] In this case, I agree with the Respondent that it was reasonable for the RAD to consider the inconsistencies relating to the October and November 2017 meetings, and the PSB threat, to be central to the Applicant's refugee claim. As noted by the RAD, the interactions at the October and November 2017 meetings represent the sole reason the Applicant states that he fled China in March 2018. Similarly, the details around the PSB threat ground the Applicant's asserted fear of persecution.

[19] When considering the inconsistencies relating to the October and November 2017 meetings, the RAD did not find that there was a singular point or misunderstanding, but rather many points of inconsistency around the testimony relating to what happened, who was involved and what was said. As the RAD found the interactions at the October and November 2017 meetings to be significant, these accumulated inconsistencies both in the testimony and with the BOC Narrative undermined the Applicant's credibility. I see no error in this reasoning.

[20] Similarly, the RAD found the details relating to when the Applicant learned of the PSB's interest and of his wife's interaction with village officials to be a key piece of the claim. As explained by the RAD, given the problematic evidence relating to the Applicant's own interactions with village officials, and the limited number of events involving the village

officials, it did not consider the RPD to be overly-exigent in expecting a consistent story regarding when the Applicant learned of the PSB's interest. I find this analysis reasonable.

[21] The Applicant states that when the inconsistencies relating to the October and November 2017 meetings were raised, the Applicant indicated that he did not understand the questioning, while counsel for the Applicant argued that the Applicant was confused with the dates. The Applicant argues in his written memorandum that the RAD did not consider the explanation that the Applicant did not understand the questioning, but only focussed on his counsel's argument for explaining the inconsistency. In my view, this distinction is not borne out by the record.

[22] When the RPD member asked why the Applicant testified that he was threatened at the October visit, when later testifying that he was not threatened at that time, the Applicant stated that he did not understand the question. After the Applicant's counsel interjected to say that there was confusion about the dates, the Applicant adopted this explanation for his inconsistencies.

[23] The argument raised before the RAD was that the credibility finding was unreasonable because the Applicant was confused, both because he had not organized the attendances by date in his own mind (but rather in terms of "first time" and "second time"), and because he had difficulty with dates in light of his education. The RAD considered both of these arguments in the context of whether the Applicant was confused about the questions, but did not find the explanations given for the inconsistency to be sufficient. The RAD found that there was no objective evidence to support the claim that the Applicant lacked the ability to understand dates or that he was in any other way mentally impaired and unable to understand the questions.

[24] In his written memorandum, the Applicant also argues that the RAD focussed on inconsequential inconsistencies in the Applicant's evidence relating to the date when the Applicant first learned from his wife that the PSB was after him, instead of considering the content of the wife's letter, which set out facts corroborating the Applicant's refugee claim. The Applicant asserts that this represents an incomplete assessment of the Applicant's supporting evidence.

[25] I agree that the failure to address a piece of evidence that directly contradicts the decision-maker's conclusion may be a reviewable error (*Adejuwon v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 432 at para 22; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35, 1998 CanLII 8667 (TD)). However, this is not the case here. The wife's letter does not address the Applicant's inconsistent recollection of when he learned that the PSB was after him.

[26] As held in *Lawani* at paragraph 24 and *Olajide* at paragraph 15, little or no weight may be given to corroborative evidence provided in support of a claim if there are pre-existing credibility concerns regarding central elements of the claim.

[27] Although the RAD did not consider the substance of the wife's letter in detail, it explained that the unsworn statement was insufficient to overcome the problems found with the Applicant's credibility. The Applicant simply disagrees with the weight assigned to the wife's letter. This is not a reason to overturn the Decision.

[28] The circumstances relating to the PSB threat are central to the Applicant's claim that he was in fear of the authorities. It was therefore reasonable for the RAD to expect the Applicant to remember when he was first told that the PSB was after him and reasonable to draw a negative credibility inference from an inconsistency on this fact. I see no error in the RAD not giving greater weight to the content of the wife's letter.

B. *The delay in leaving China*

[29] The Applicant argues that his delay in leaving China should not have been a factor supporting the RAD's credibility finding. The Applicant relies on *Guarin Caicedo v Canada (Citizenship and Immigration)*, 2010 FC 1092 [*Guarin Caicedo*] in support of his argument.

[30] In *Guarin Caicedo* at paragraph 19, Justice Near held that although a delay in leaving one's country of origin can be a factor for assessing credibility, it is not decisive:

[19] Although a delay in leaving a country can be a factor in assessing credibility, it is not decisive. Justice Roger Hughes recently found that a refugee claimant's two-month delay in leaving Mexico was not an unreasonable amount of time in the circumstances since the claimant explained that he kept himself sequestered (*Fernando v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 76, 87. Imm. L.R. (3d) 156 (F.C.) at para 3). With all due deference to the Board, taking six weeks to arrange to permanently leave your family, home and country while experiencing escalating threats does not seem to me to be unduly unreasonable. Especially when we consider that the PA did take other reasonable steps in line with the threat similar to sequestration – she stopped doing volunteer work, going to the party office, changed her telephone number and fled as soon as she decided that was her only option.

[31] In this case, the Applicant delayed departing China for over five weeks after obtaining his temporary resident visa. This included a two-week delay after spending Chinese New Year with his family.

[32] The RAD found that if the Applicant were truly in fear of persecution, he would not have opted to stay to celebrate Chinese New Year with his family and would not have delayed further after the holiday. It therefore found that these facts did not support a subjective fear and further undermined the Applicant's credibility.

[33] While the Applicant asserts that he did not have an immediate fear of persecution and that this was a situation of escalating fear, the evidence does not support this characterization. Rather, as stated by the RAD, the BOC Narrative indicated a fear at the time the Applicant applied for a visa to come to Canada.

[34] There is no evidence, like in *Guarin Caicedo*, that the Applicant was making preparations to leave China while at the same time taking steps (such as sequestration) to protect himself. The only explanation given, as noted by the RAD, is that the Applicant wanted to celebrate Chinese New Year with his family.

[35] It was reasonable for the RAD to agree with the RPD that the Applicant had not established a genuine subjective fear and to conclude that this was an additional factor supporting that the Applicant was not credible.

IV. Conclusion

[36] For all of these reasons, I find that the RAD did not err in its assessment of credibility and that the Decision is reasonable. The application is therefore dismissed.

[37] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT IN IMM-4303-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

"Angela Furlanetto"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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