

Federal Court



Cour fédérale

**Date: 20220401**

**Docket: IMM-591-21**

**Citation: 2022 FC 460**

**Ottawa, Ontario, April 1, 2022**

**PRESENT: Mr. Justice McHaffie**

**BETWEEN:**

**SONG CUI NI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Song Cui Ni claims the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada erred in impugning his credibility because he had no documentary evidence to corroborate his refugee claim. He argues his testimony should have been presumed to be true and that it is unreasonable to question a refugee claimant's credibility based solely on a lack of corroborative evidence.

[2] There is a general presumption that a refugee claimant's sworn testimony is truthful. However, that presumption may be rebutted and an adverse credibility inference reasonably drawn where it is reasonable to expect corroborative evidence to be available and its absence is not reasonably explained by the claimant. Here, the RAD could have more clearly explained why it expected that certain documents would be available and filed. Overall, however, I conclude Mr. Ni has not shown the RAD's decision lacks the transparency, justification, and intelligibility required of a reasonable decision.

[3] The application for judicial review is therefore dismissed.

## II. Issues and Standard of Review

[4] Mr. Ni raises the following issues on this application:

A. Did the RAD err in making its negative credibility finding?

B. Did the RAD err by failing to conduct a proper analysis under section 97 of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]*?

[5] Each of these issues goes to the merits of the decision. They are therefore reviewable on the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25. A reasonable decision is one that is based on coherent reasoning and is justified in relation to the constellation of law and facts relevant to it: *Vavilov* at paras 101–105. In conducting reasonableness review, the Court considers the reasons given by the decision maker in light of the record and the issues raised, and asks whether the decision

bears the hallmarks of justification, transparency, and intelligibility, and whether it is justified in relation to the relevant factual and legal constraints that bear on it: *Vavilov* at paras 83–86, 91–95, 99. The onus lies on the applicant challenging the decision to demonstrate that it is unreasonable: *Vavilov* at para 100.

[6] Mr. Ni accepts that the second issue only arises in the event the Court finds that the RAD's credibility finding was unreasonable.

### III. Analysis

#### A. *The RAD's credibility finding was reasonable*

##### (1) The refugee claim and the RPD's decision

[7] Mr. Ni claims he is wanted by China's Public Security Bureau (PSB) for having protested the government's enclosure and expropriation of land in his village, including his home, to build a police academy. He asserts that the enclosure occurred without forewarning and that when he and other villagers tried to stop the construction team, a large contingent of police officers arrived. They arrested some villagers and took pictures of others, including Mr. Ni. Fearing repercussions, he left China on June 24, 2017, with the assistance of a smuggler. The following week, on June 30, 2017, he says PSB officers sought him at his home to arrest him. They searched Mr. Ni's home, questioned his family about his whereabouts, and said he must return to China immediately and report to them on suspicion of inciting the masses, undermining country development, and intending to cause riots. Mr. Ni later learned that those who had been arrested had been tortured and abused in detention and subsequently released.

[8] The Refugee Protection Division (RPD) found Mr. Ni's allegations unsubstantiated and unbelievable. The RPD concluded that given the specificity of the alleged charges against him, the absence of any record left by Chinese authorities undermined his credibility. The RPD was also unsatisfied with Mr. Ni's evidence that he was unsure whether the PSB still wanted him. While Mr. Ni referred in his evidence to an inquiry made by a lawyer on his behalf in March 2017, this had not been part of the narrative filed with his Basis of Claim.

[9] The RPD also referred to the absence of any corroborating documentation of Mr. Ni's allegations, such as affidavits or letters from his family members who were threatened by the PSB; communications from the protestors who had been detained and released; photographs of the protest, the house, its demolition, or the new construction; or expropriation documents. The RPD noted that there were laws in China to regulate expropriation that include a dispute process. Given that rural land expropriation was not uncommon in China and that two years had passed between Mr. Ni's departure and his refugee hearing during which corroborating documents could have been obtained, the RPD drew a negative inference from his failure to do so.

[10] Given these credibility issues, the RPD found that on a balance of probabilities, Mr. Ni was not wanted by the Chinese authorities as he alleged, and dismissed his refugee claim.

[11] Mr. Ni appealed to the RAD, challenging the RPD's credibility findings.

(2) The RAD's decision

[12] The RAD found the RPD erred in part in its assessment of credibility. However, having reviewed the record, it concluded Mr. Ni's credibility could be impugned due to the lack of corroborating documentary evidence. The RAD noted Mr. Ni had not provided any evidence of the demolition of his home or the current state of the property, any supporting letters, photographs, or "a single document to substantiate his allegation that his land was expropriated." Quoting the Federal Court of Appeal's decision in *Adu*, the RAD concluded this was a case where the presumption that Mr. Ni's sworn testimony was true was "rebutted by the failure of the documentary evidence to mention what one would normally expect it to mention": *Adu v Canada (Minister of Employment & Immigration)*, [1995] FCJ No 114 at para 1.

[13] In addition to the credibility issue, the RAD considered whether Mr. Ni's actions or profile put him at risk if he were to return to China. Having reviewed the evidence regarding land expropriation and related protests in China, the RAD concluded Mr. Ni would not be seen as a political dissident or opponent given the essentially local nature of the protest. In reaching this conclusion, the RAD found the allegation that some individuals involved in the same protest were arrested had not been established in light of Mr. Ni's credibility.

[14] Although not explicitly stated, it appears the RAD did not agree with the RPD's conclusion that Mr. Ni's credibility was undermined by the lack of records left by Chinese authorities.

- (3) The RAD reasonably relied on the absence of corroborative evidence in the circumstances

[15] Mr. Ni argues it was unreasonable for the RAD to rely exclusively on the lack of corroborative documentation to undermine his credibility. Relying on this Court's decisions in *Ahortor*, *Zheng* and *Ndjavera*, he argues the lack of corroborative evidence, in and of itself, cannot sustain a negative credibility determination: *Ahortor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 705 (TD) at para 45, citing *Attakora v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 444 (CA); *Zheng v Canada (Citizenship and Immigration)*, 2007 FC 1274 at paras 15, 20; *Ndjavera v Canada (Citizenship and Immigration)*, 2013 FC 452 at paras 6–7.

[16] For the following reasons, I conclude that it is not currently a general principle of Canadian immigration law that the lack of corroborative evidence can never be used to sustain a negative credibility determination in respect of a refugee claimant. Rather, the law recognizes that a failure to provide corroborative evidence may be reasonably considered as going to credibility in one of two cases: (1) where there are other valid reasons to doubt a claimant's credibility; and (2) where such evidence would be reasonably expected to be available and filed, and the decision maker does not accept the claimant's explanation for failing to produce it. Put another way, there is no legal constraint on a decision maker precluding an adverse credibility inference in these circumstances, and it is reasonable for the decision maker to reach such an inference in the appropriate case.

[17] The oft-cited starting point for the principle that a refugee claimant's sworn evidence is presumed to be truthful is the Federal Court of Appeal's decision in *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (CA). Justice Heald for the majority of the Court in that case held that "[w]hen an applicant swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there be reason to doubt their truthfulness": *Maldonado* at para 5. Subsequent jurisprudence has provided guidance on when there is reason to doubt the truthfulness of sworn evidence.

[18] In *Ahortor*, Justice Teitelbaum considered the *Maldonado* principle in reviewing adverse credibility findings of the Convention Refugee Determination Division (CRDD), the predecessor of the RPD. After concluding that the inconsistencies identified by the CRDD had been explained by the applicant, Justice Teitelbaum turned to the CRDD's conclusion that the applicant's narrative was not credible because there was no documentary evidence to corroborate his father's arrest or the existence of a coup: *Ahortor* at paras 22, 32–45. He noted that there was evidence on the record to explain why arrest reports related to the father's arrest would not be available: *Ahortor* at paras 46–48. It is in this context that Justice Teitelbaum noted that the "failure to offer documentation of the arrest [...] cannot be related to the applicant's credibility, in the absence of evidence to contradict the allegations": *Ahortor* at para 45.

[19] As I have previously noted, the principles in *Maldonado* and *Ahortor* must be taken to exist alongside section 106 of the *IRPA* and Rule 11 of the *Refugee Protection Division Rules*, SOR/2012-256 [*RPD Rules*], each of which was introduced after *Maldonado* and *Ahortor*:

*Pazmandi v Canada (Citizenship and Immigration)*, 2020 FC 1094 at paras 18–25; see also *Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968 at paras 27–36.

[20] Rule 11 of the *RPD Rules* provides that a claimant “must provide acceptable documents establishing their identity and other elements of the claim.” Where they do not have acceptable documents, a claimant “must explain why they did not provide the documents and what steps they took to obtain them.” Justice Strickland discussed the interaction of this Rule with the *Maldonado* principle in her decisions in *Ismaili v Canada (Citizenship and Immigration)*, 2014 FC 84 at paras 31–55 and *Luo v Canada (Citizenship and Immigration)*, 2019 FC 823 at paras 18–22.

[21] As Justice Strickland noted in *Luo*, “a failure to provide corroborating documentation is only a proper consideration for the decision-maker [...] where there are valid reasons to doubt a claimant’s credibility, or, where the decision-maker does not accept the claimant’s explanation for failing to produce documentary evidence when it would be reasonably expected to be available”: *Luo* at para 21, citing *Radics v Canada (Citizenship and Immigration)*, 2014 FC 110 at para 30. Whether documentary evidence is reasonably expected in a particular case depends on the facts of the case: *Luo* at para 22, citing *Mendez Lopera v Canada (Citizenship and Immigration)*, 2011 FC 653 at para 31. As the Minister points out, citing *Luo*, *Radics*, *Pazmandi*, *Senadheerage* and other cases cited in those decisions, these principles are now reflected in a line of decisions from this Court. They are also consistent with the *Adu* decision of the Court of Appeal cited by the RAD.



[22] As a result, I am unable to conclude that the general principle stated by Mr. Ni—that the lack of corroborative evidence, in and of itself, cannot sustain a negative credibility determination—is a binding principle that acts as a legal constraint on the RAD rendering any decision that does not follow it unreasonable: *Vavilov* at para 112. Rather, this Court has recognized that it is reasonable for the RPD or the RAD to draw adverse credibility inferences based on a lack of corroboration where it would be reasonably expected that corroborative evidence would be available and filed, and there is no reasonable or acceptable explanation for its absence. In such cases, the decision maker is expected to set out their conclusions to this effect with reasonable precision, an expectation that accords with the general principles of transparency and justification in administrative decision making: *Luo* at para 21, citing *Rojas v Canada (Citizenship and Immigration)*, 2011 FC 849 at para 6; *Vavilov* at paras 94–95.

[23] In the present case, the RAD clearly identified the types of corroborative evidence at issue, namely those described in paragraph [12] above. It also made a clear finding that in the circumstances of the case, it could be reasonably expected for Mr. Ni to provide such documents. While the RAD could have explained with greater clarity the basis for its finding that the documents would be reasonably expected, I am satisfied reviewing the reasons in the context of the record that it adequately and reasonably explained its conclusion. In particular, the potential availability of photographs or letters of support from either family or others involved in the events requires little supplementary explanation, particularly in the context of the RPD's reference to the lengthy time between Mr. Ni's refugee claim and his hearing.

[24] As for documents related to the asserted expropriation, the RAD discussed the country condition evidence pertaining to land expropriation in China, citing the same document identified by the RPD as including reference to a dispute process. Mr. Ni's evidence was that those in his village had not received notices of land expropriation, which would explain why he did not file one. The RAD could therefore have better explained why it concluded that such a document would be expected. However, as the Minister notes, the RAD's primary concern was not with a notice of expropriation in particular, or any specific document, but with the fact that Mr. Ni had not provided *any* documents to substantiate the allegation that his land was expropriated and that the government had failed to compensate his family for it. In the context of Rule 11 of the *RPD Rules* and this Court's jurisprudence, this was a reasonable basis for the RAD to reach an adverse credibility finding.

[25] I am therefore satisfied that the RAD's decision reasonably explains its conclusion regarding the adverse credibility inferences drawn from the lack of corroborative evidence, that its conclusions do not offend any legal constraints on the decision, and that it meets the requirements of justification, transparency and intelligibility required of a reasonable decision.

[26] As Mr. Ni concedes, the Court's finding on this aspect of his argument is determinative of the application for judicial review. I therefore need not address his arguments with respect to whether the RAD conducted an adequate analysis under section 97 of the *IRPA*.

IV. Conclusion

[27] The application for judicial review is therefore dismissed. Neither party proposed a question for certification and I agree that none arises in the matter.

**JUDGMENT IN IMM-591-21**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is dismissed.

**“Nicholas McHaffie”**

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**Judge**

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-591-21

**STYLE OF CAUSE:** SONG CUI NI v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** NOVEMBER 23, 2021

**JUDGMENT AND REASONS:** MCHAFFIE J.

**DATED:** APRIL 1, 2022

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