

Federal Court



Cour fédérale

Date: 20230207

Docket: IMM-351-22

Citation: 2023 FC 173

Toronto, Ontario, February 7, 2023

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

HAIPING ZHOU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, a 40-year-old citizen of China, fears persecution at the hands of the Chinese authorities due to his religious beliefs as a member of the Church of Almighty God [CAG]. He seeks judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada dated January 3, 2022, which dismissed his appeal of the decision of the Refugee Protection Division [RPD]. The RPD found that the Applicant is neither a Convention refugee nor a person in need of protection within the meaning of sections 96 and 97 of the

Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]. In denying the Applicant's appeal, the RAD agreed with the RPD that the determinative issue was credibility.

[2] The Applicant asserts that the RAD's decision was unreasonable on the basis that: (i) the authenticity of the Applicant's supporting documents was rejected based solely on other adverse credibility findings without subjecting the documents to any independent analysis or weighing the documents against its other findings; (ii) the RAD was faulty and overly microscopic in its assessment of the Applicant's statements concerning his religious knowledge; and (iii) there was undue emphasis placed on discrepancies between the Applicant's port-of-entry interview and testimony.

[3] As agreed by the parties, each of the aforementioned issues are reviewable on a standard of reasonableness. When reviewing for reasonableness, the Court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible, and justified. A reasonable decision is 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 [see *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility, and transparency [see *Adenjjj-Adele v Canada (Minister of Citizenship and Immigration)*, 2020 FC 418 at para 11].

[4] While the Applicant has raised a number of issues on this application, I find that the determinative issue is the RAD's consideration of the supporting documents submitted by the

Applicant. I find that the RAD's assessment of the supporting documents was unreasonable and that this assessment tainted the related findings.

[5] In support of his application, the Applicant provided three key documents: (i) a receipt stamped by the Public Security Bureau [PSB] in respect of the Applicant's payment of a fine for distributing illegal church pamphlets; (ii) a PSB letter of warning/admonition from December 27, 2018, stating that the Applicant was caught in June 2018 distributing illegal pamphlets and brought to the PSB station for interrogation, released after being fined and warned against further illegal activities, and brought to the PSB station in December 2018 and warned again against cult group activities; and (iii) a PSB summons dated April 1, 2019, alleging that the Applicant breached the PSB's warning to refrain from engaging in CAG activities [collectively, the Supporting Documents].

[6] The RPD concluded that, on a balance of probabilities, the Supporting Documents submitted by the Applicant were not authentic and assigned them no weight. The RPD stated that in considering the several other credibility findings concerning core issues of the Applicant's claim, this raised doubt as to the authenticity of the Supporting Documents. The RPD also noted that: (i) the Applicant had demonstrated access to fraudulent documents, given that he travelled to Canada using a fraudulent Taiwanese passport; and (ii) fraudulent documents are easily obtained in China, with the Applicant's home province of Fujian considered particularly high-risk for fraudulent documents.

[7] The RAD agreed that the RPD erred in its consideration of the Supporting Documents, stating at paragraph 11(c) of its reasons:

I agree with the Appellant that where the Board questions the authenticity of a document, it must subject the document to independent analysis. I also find that the RPD erred by relying on its previous credibility findings when assessing the supporting documents. In my re-analysis of the documents, I note that I have no basis to find that they are fraudulent. This does not mean that I am in a position to find that they are genuine; I am not equipped to undertake a forensic analysis of various documents from various parts of the world. I will weigh the documents against the Appellant's credibility problems in my overall credibility assessment, in order to determine if his claim is genuine.

[Emphasis added.]

[8] In this case, the Supporting Documents, if genuine, would conclusively demonstrate that the Applicant is wanted by authorities in China. As such, the RAD was obligated to deal squarely with the Supporting Documents before coming to an overall credibility finding, which required that the RAD make a finding, one way or another, as to whether the Supporting Documents are authentic [see *Ren v Canada (Citizenship and Immigration)*, 2015 FC 1402 at para 25]. Stating that there is no basis to find that the Supporting Documents are fraudulent and then suggesting that that does not mean the documents are genuine is an abdication of that obligation. Moreover, to suggest, in effect, that the RAD is not in a position to assess the authenticity of the documents is untenable. Both the RPD and the RAD routinely assess the authenticity of such documents with reference to the country condition information related thereto as set out in the National Document Package and this Court has found that they are well placed to do so [see, for example, *Gong v Canada (Citizenship and Immigration)*, 2020 FC 163; *Azenabor v Canada (Citizenship and Immigration)*, 2020 FC 1160; *Kahumba v Canada (Citizenship and Immigration)*, 2018 FC 551 at

para 37]. The RAD failed to subject the Supporting Documents to any independent analysis, which was the same failure for which it criticized the RPD.

[9] Further, while the RAD suggested that it would weigh the Supporting Documents against the Applicant's credibility concerns in making its overall credibility assessment, the RAD's overall credibility assessment simply stated that:

[12] When I consider the Appellant's credibility problems alongside the documents he has provided, I find that he is, overall, lacking in credibility. I find that he was not a genuine practitioner of CAG in China, was not pursued by the PSB, and does not face a serious possibility of persecution or a likelihood of other harm on that basis.

[Emphasis added.]

[10] Even if the RAD's approach to the assessment of the Supporting Documents was appropriate (which it was not), I find that the RAD's reasons ultimately lacked transparency as to what weight the RAD actually assigned to the Supporting Documents and how they factored into its credibility determination.

[11] The aforementioned errors in the RAD's assessment of the Supporting Documents render the RAD's decision unreasonable. Accordingly, the application for judicial review is allowed, the decision of the RAD is set aside, and the matter is remitted to a differently-constituted panel for redetermination.

[12] Neither party proposed a question for certification and I agree that none arises.

JUDGMENT in IMM-351-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the matter is remitted to a differently-constituted panel of the Refugee Appeal Division for redetermination.
2. The parties proposed no question for certification and none arises.

“Mandy Aylen”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-351-22

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