Federal Court  Cour fédérale

Date: 20230227

Docket: IMM-3528-22

Citation: 2023 FC 275

Toronto, Ontario, February 27, 2023

PRESENT: Madam Justice Go

BETWEEN:

JIAYI LIU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Jiayi Liu [Applicant], a citizen of China, seeks judicial review of the Refugee Appeal Division's [RAD] decision to uphold the Refugee Protection Division's [RPD] decision denying his claim for refugee protection.

[2] The Applicant is 32 years old. He spent his last decade or so in China helping his parents on their leased farm in Shuguang town, Jilin province. He took over his parent's lease agreement with the village committee in January 2016.

[3] In May 2018, the Shuguang town government informed the Applicant's family and 27 other households that their farmland would be expropriated to build a new highway, and that they needed to vacate the land by the end of July 2018.

[4] Dissatisfied with the compensation offered for the expropriation, the Applicant and four other villagers attempted to raise their concerns with the town and county governments on five occasions between June and July 2018. The Applicant alleges that these concerns were either unheard or rejected, and that the town government refused to alter the compensation. The Applicant alleges that out of anger, he spoke out against the town government and threatened to escalate the matter to the provincial or central government in Beijing. He claims that he was assaulted by security guards during an impromptu protest and was subsequently detained by the Shuguang town Public Security Bureau [PSB] for two weeks, where he was interrogated and beaten before being released in July 2018.

[5] After his release, the Applicant claims that the affected land was forcibly taken. He states that he refused to sign the compensation agreement and told the villagers that he planned to complain to the central government, and that he was detained by the PSB for another two nights at the end of July 2018 as a result.

[6] The Applicant states that with the help of a snakehead, he arrived in Canada in December 2018 and filed a claim for refugee protection on the basis that he fears persecution from the Chinese authorities due to his political opinion. The RPD rejected the Applicant's claim in September 2021.

[7] While accepting that the Applicant's land was expropriated and that he participated in a protest, the RAD rejected the Applicant's appeal and confirmed that he 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*] in a decision dated March 17, 2022 [Decision].

[8] For the reasons set out below, I grant the application.

II. Issues and Standard of Review

[9] The Applicant raises several issues on judicial review, arguing overall that the RAD erred in its assessment of the personal evidence submitted by the Applicant when finding that the Applicant is neither a Convention refugee nor a person in need of protection. The Applicant further argues that the RAD erred in finding that there is no nexus to Convention grounds.

[10] In my view, the determinative issue in this case is the RAD's errors in assessing the personal documentary evidence.

[11] The parties agree that the Decision is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[12] 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": *Vavilov* at para 85. The onus is on the Applicants to demonstrate that the Decision is unreasonable: *Vavilov* at para 100. To set aside a decision on this basis, "the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency": *Vavilov* at para 100.

III. Analysis

A. *The RAD erred in its assessment of the Applicant's documentary evidence*

[13] The Applicant presented three documents to the RPD to support his allegations that he was detained by the PSB.

[14] The Applicant claims that upon his release from the second detention by the PSB, he was forced to sign a promise that he would not make anti-government statements and was required to report monthly to the Shuguang PSB station beginning in August 2018 [Administrative Punishment Decision]. He reported twice to the PSB in September and October 2018, and claims he was interrogated, threatened, and assaulted on these occasions.

[15] After departing from China, the Applicant alleges that the PSB notified him that he failed to report as scheduled, and subsequently visited his parents' home and left them a summons for him [Summons].

[16] In addition to the Administrative Punishment Decision and the Summons, the Applicant also submitted a copy of a Certificate of Release issued by the Meihekou Detention Center, dated July 25, 2018 [Certificate of Release].

[17] The RAD found the Summons to be fraudulent and, on that basis, decided to give the other two documents no weight.

(a) Summons

[18] The Summons includes a line reserved for "the summoned person (signature)", on which the Applicant's signature appears. The Summons also states that the "time of arrival of the summoned person" was 11:30 and the "time of ending question proofing" was 12:30 on January 9, 2019. The Applicant testified at the RPD hearing that the Summons was left on January 8, 2019 at his parents' home, and that his wife signed his name for him on the signature line. With respect to the times indicated on the Summons, the Applicant testified "I do not know about this part. They just gave it to my wife."

[19] The RPD questioned the authenticity of the Summons and the Applicant's testimony about it. The RAD similarly took issue with the Applicant's testimony regarding his wife's signature and the start and end times on the Summons. The RAD found the Applicant's explanation for these "major irregularities that go to the substance and core content of the document" inadequate. The RAD also found no objective evidence to suggest that Chinese authorities accept forged signatures on official documents.

[20] The RAD concluded that the Summons is fraudulent and afforded it no weight. The RAD found that the fraudulent Summons undermined the Applicant's credibility with respect to his fear of arrest upon returning to China, as the Summons is a central piece of evidence of his claims.

[21] The Applicant contests the RAD's finding that the Summons is fraudulent and argues that it was unreasonable for the RAD to draw a negative inference on the Applicant's overall credibility based on the irregularities in the Summons.

[22] The Applicant argues that the irregularities the RAD took issue with were insufficient to justify a negative credibility finding, based on case law stating that "a finding that a false or irregular document detracts from a claimant's overall credibility must be 'cautiously approached'": *Mohamud v Canada (Citizenship and Immigration)*, 2018 FC 170 [*Mohamu*d] at para 9, citing *Guo v Canada (Citizenship and Immigration)*, 2013 FC 400 [*Guo*] at para 7.

[23] While I note that the factual contexts of *Mohamud* and *Guo* differ from the case at hand, I agree that the Court's caution should nevertheless be heeded by decision-makers.

[24] In finding the Summons to be fraudulent, the RAD reasoned as follows:

> [21] The [Summons] clearly indicates the summoned person's signature as the [Applicant]. There is nothing on the face of the [Summons] to indicate that it was signed by his wife on his behalf or that his wife was questioned by the PSB. Notably, when questioned by the RPD as to why the time of arrival and time of ending was filled out on the [Summons], the [Applicant] had no explanation and indicated that he did not know. **The [Applicant] does not address as to why his wife would be required to sign the**

> **[Summons] in *his* handwriting as opposed to signing it with her own signature on his behalf. I do not find the [Applicant's] explanation to be adequate. He has provided no objective evidence to suggest this is an acceptable practice in China for the authorities to allow someone other than the subpoenaed person to forge their signature on an official document.**
>
> [Emphasis added]

[25] I note, however, that the exchange between the RPD member and the Applicant on the subject of the Summons was brief, as reflected in the following excerpt of the RPD hearing transcript:

> MEMBER: Okay. And since we are on the topic of the summons that you received on January 8, 2019. Do you want to translate that to him?
>
> INTERPRETER: Yeah.
>
> MEMBER: And I ... I misspoke 2019, I am sorry. Now I am looking at it and even when I look at the ... the translations, it says, summons person's signature and it is ... it is signed. And ...
>
> CLAIMANT: Yes.
>
> MEMBER: Well, who signed it?
>
> CLAIMANT: My wife signed it on behalf of me using my handwriting.
>
> MEMBER: Okay, I am ... I am going to show you my screen. Are you ... I am getting a little bit of ... are you able to see that clearly? Or do I need to make it bigger?
>
> CLAIMANT: Yes, I can see.
>
> MEMBER: Okay. So for my translation this has time of arrival of summons person was January 9, 2019 at 11:30 and end of questioning January 9th 12:30. So I am just wondering why this part is filled out when you did not ... when you did not show up for questioning.
>
> CLAIMANT: I do not know about this part. They just gave it to my wife.
>
> MEMBER: Okay. So tell me about what led you to make a refugee claim here in Canada.

[26] From the exchange quoted above, it was clear that the Applicant was never asked by the RPD to explain why his wife would be required to sign the Summons. Further, the Applicant was not asked to clarify what he meant when he said that his wife signed "in his handwriting." Yet the RAD concluded that the Applicant allowed his wife to "forge" his signature, and faulted the Applicant for failing to explain why his wife would do so when the question was never posed to him in the first place.

[27] Further, I agree with the Applicant that the suspicion around his wife signing the Summons "in his handwriting" is insufficient to conclude that the Summons is fraudulent.

[28] At the hearing, the Applicant made additional submissions based on Item 9.11 of the October 31, 2018 National Documentation Package [NDP], entitled "China: Circumstances and authorities responsible for issuing summonses/subpoenas; procedural law; whether summonses and subpoenas are given to individuals or households; format and appearance; whether legality can be challenged; penalties for failure to comply with a summons or subpoena." Specifically, the Applicant highlighted the following statement in the NDP:

> The Visiting Scholar noted that procedures for issuing summonses [described in this section] "are not always followed in practice." She added that [l]egal scholars as well as the official and unofficial media describe a variety of procedural violations and abuses, ranging from the failure to notify [of] summonses, to their repeated use, to their enforcement by auxiliary or private policemen.

[29] I also note that the same NDP document contains the following observation:

> The Visiting Scholar added that "a written summons has to be signed by the suspect, who however has the right not to affix his signature," but did not provide information on the consequences, if any, of not signing.

[30] The information in the NDP suggests that there are a "variety" of practices when it comes to summonses. It confirms the right for a person not to affix their signature but does not describe the consequences of not affixing one's signature. In light of this objective evidence, I further conclude that it was unreasonable for the RAD to find the Summons fraudulent because the Applicant "has provided no objective evidence to suggest this is an acceptable practice in China for the authorities to allow someone other than the subpoenaed person to forge their signature on an official document."

[31] I agree that the burden was on the Applicant to prove his claim. However, I reject the Respondent's submission that it was defensible for the RAD to make such finding based on plausibility and common sense: *Moualek v Canada (Citizenship and Immigration)*, 2009 FC 539 at para 1; *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 26.

[32] First, I note that the RAD did not make any implausibility findings with respect to the Applicant's testimonial evidence. Rather, the RAD found the Applicant's explanation to be inadequate. However, as I noted above, the Applicant's brief answer was proportional to the equally brief questioning by the RPD.

[33] Further, as the case law confirms, there is a presumption of truthfulness owed to the Applicant: *MalDonado v Minister of Employment and Immigration*, [1980] 2 FC 302 (FCA). In addition, implausibility findings must only be made in the clearest of cases: *Zaiter v Canada (Citizenship and Immigration)*, 2019 FC 908 at para 8, citing *Valtchev v Canada (Citizenship and Immigration)*, 2001 FCT 776.

[34] This case was not, in my view, one that constituted the "clearest of cases" so as to justify an implausibility finding. The Applicant did not attempt to provide a fanciful explanation for why his wife would sign the Summons on his behalf. Rather, as the Applicant was already in Canada by then, he stated that his wife signed the Summons and he did not know about the times listed on the document. While there was a lack of clarity in the Applicant's explanation, it did not defy common sense, particularly in light of the variety of practices surrounding summonses found in the 2018 NDP.

[35] In conclusion, I find that the RAD's negative credibility finding was unreasonable taking into account the objective NDP evidence, the substance of the irregularities, and the jurisprudence that cautions against making implausibility findings except in the clearest of cases.

(b) The Certificate of Release

[36] The Certificate of Release refers to the Applicant's "sabotage of government construction and anti-government remarks" and states that the Applicant was released from detention pursuant to Article 65 of the *Criminal Procedure Law of the People's Republic of China* [*Criminal Procedure Law*].

[37] The RAD reviewed the English translation of the *Criminal Procedure Law 2018*, found in Item 9.5 of the May 31, 2021 NDP, which reads:

> Traffic, accommodation, food, and other expenses incurred by witnesses as a result of performing their obligation to testify shall be subsidized. The subsidies for witnesses' testimony shall be included in the public security organs operations expenses. When witnesses

> from a workplace testify, their workplace must not withhold or indirectly withhold their salary, benefits or other benefits.

[38] The RAD noted that this provision is wholly unrelated to the Applicant's circumstances, and found this discrepancy to be a "significant irregularity on the face of the document."

[39] The RAD also pointed out that both the Administrative Punishment Decision and the Certificate of Release were issued by the same authority as the Summons. The RAD noted that the submission of a fraudulent document (i.e. the Summons) can impact the weight assigned to other documents adduced by the Applicant where they are related or have a common source. As such, based on the "significant irregularity" regarding Article 65 of the *Criminal Procedure Law* and the same issuing authority behind the fraudulent Summons, the RAD placed little weight on the Certificate of Release.

[40] The Applicant argues that the RAD committed a fatal error by relying on the 2021 NDP when it assessed the Certificate of Release's reference to the *Criminal Procedure Law*. Although the *Criminal Procedure Law 2018* in this 2021 NDP is dated 2018, the access date for the document is October 23, 2020. The Applicant asserts that the October 31, 2018 NDP was the relevant NDP to assess, as the Certificate of Release is dated July 25, 2018. The 2018 NDP contains an English translation of the *Criminal Procedure Law 2012*, wherein Article 65 is directly relevant to the Certificate of Release and its contents:

> **Article 65** A people's court, people's procuratorate and public security organ may allow a criminal suspect or defendant under any of the following conditions to be released on bail pending trial:

> (1) The criminal suspect or defendant commits a crime punishable by public surveillance, criminal detention or supplementary punishments separately meted out;
>
> (2) The criminal suspect or defendant commits a crime punishable by fixed-term imprisonment or severer punishments, but would not pose a threat to the society if he/she is released on bail pending trial;
>
> (3) Where the criminal suspect or defendant is suffering from a serious illness and cannot take care of him/herself, or is during pregnancy and breastfeeding period, thus would not pose a threat to the society if he/she is released on bail pending trial; or
>
> (4) His/her case has not been concluded upon expiry of the detention period, and therefore he/she needs to be released on bail pending trial.
>
> Release on bail pending trial shall be executed by public security organs.

[41] The Applicant contends that there was no information before the RAD that the *Criminal Procedure Law 2018* was in effect before October 30, 2018, or specifically on July 25, 2018. The Applicant argues that the RAD "blatantly relied" on "false information" to assess the Certificate of Release and unacceptably relied on it, considering there was no other irregularity identified.

[42] In view of the objective evidence, I agree that the RAD erred by failing to consider if the *Criminal Procedure Law* it consulted was in effect in July 2018.

[43] The Respondent concedes that the RAD erred in finding an irregularity on the face of the Certificate of Release by relying on the wrong NDP. However, the Respondent argues that this error is not determinative of the Decision overall, as the RAD was nonetheless not persuaded that

the Applicant was detained by Chinese authorities based on the other evidence, including the RAD's "clear and unequivocal" finding that the Summons is fraudulent.

[44] I reject the Respondent's argument. I have already found the RAD's assessment with respect to the Summons unreasonable. The RAD's erroneous assessment of the Summons, by extension, tainted its finding regarding the Certificate of Release.

(c) Administrative Punishment Decision

[45] Like the Certificate of Release, the RAD afforded the Administrative Punishment Decision little weight since it was issued by the same authority as the Summons that the RAD found to be fraudulent.

[46] As the Respondent submits, the three documents are interrelated. Given my findings with regard to the other two documents, I conclude that the RAD's finding concerning the Administrative Punishment Decision was also unreasonable.

B. *Other Issues*

[47] In light of my findings above, I need not address the Applicant's remaining submissions.

[48] I will simply note that the RAD's findings surrounding the Applicant's personal documentary evidence formed the basis of its rejection of the Applicant's claim that the PSB is interested in his whereabouts. This analysis led the RAD to find that there is no forward-looking

risk for the Applicant if returned to China. Any errors made by the RAD concerning the Applicant's documentary evidence necessarily affects its assessment of forward-looking risk.

[49] As to the Applicant's submission that the RAD erred in finding that there is no nexus to Convention grounds, I agree with the Applicant that the question is not about the Applicant's motivation behind his protest, but rather how the Chinese authorities view such protests: *Canada (Attorney General) v Ward* [1993] 2 SCR 689 at 747.

[50] I acknowledge the cases cited by the Respondent finding that disputing compensation for land expropriation does not constitute a political protest, and does not give rise to a nexus to the Convention: see for example *Ni v Canada (Citizenship and Immigration)*, 2018 FC 948 and *Yan v Canada (Citizenship and Immigration)*, 2018 FC 781. I also acknowledge that in this case, the RAD found that the Applicant has given up pursuing further action against the government due to the lack of support from fellow villagers.

[51] I note however, that the Applicant testified that he refused to sign the compensation offer because doing so would mean he has completely given up the land. The Applicant further stated that he would "make every effort to fight for it." The Applicant's testimony may lend some support to his argument that his opposition to the land expropriation shifted from the initial focus on compensation to that of a political nature. Whether or not that shift is sufficient to form a nexus to a Convention ground is for the new panel to decide.

IV. Conclusion

[52] The application for judicial review is allowed.

[53] There is no question to certify.

JUDGMENT in IMM-3528-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The decision under review is set aside and the matter referred back for redetermination by a different decision-maker.

3. There is no question to certify.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3528-22
STYLE OF CAUSE:	JIAYI LIU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD VIA VIDEOCONFERENCE
DATE OF HEARING:	FEBRUARY 2, 2023
JUDGMENT AND REASONS:	GO J.
DATED:	FEBRUARY 27, 2023

APPEARANCES:

Vakkas Bilsin	FOR THE APPLICANT
Nicole Rahaman	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Vakkas Bilsin Lewis & Associates Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT