

Federal Court



Cour fédérale

Date: 20230714

Docket: IMM-7214-22

Citation: 2023 FC 967

Ottawa, Ontario, July 14, 2023

PRESENT: Madam Justice McDonald

BETWEEN:

GUOYING SUN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an Application for judicial review of a decision of the Refugee Appeal Division [RAD], dated July 5, 2022 [Decision]. The RAD upheld the decision of the Refugee Protection Division [RPD], finding that the Applicant was not a Convention refugee, nor a person in need of protection. The determinative issue for the RPD and the RAD was credibility.

[2] For the reasons that follow, this Application for judicial review is dismissed, as the findings of the RAD are reasonable.

I. Background

[3] The Applicant is a 50-year-old citizen of China. He alleges he will face persecution in China as he practices Falun Gong. He claims that in 2014, while hospitalized for a skin condition, another patient promoted the practice of Falun Gong as a cure for his health problems. After leaving the hospital, the Applicant says he started practicing Falun Gong with a friend, Sun Li, and a local group.

[4] In September 2017, the Falun Gong group leader was detained and Sun Li advised the Applicant to go into hiding. The Applicant left China using a snakehead and arrived in Canada in November 2017 on a visitor visa. After he arrived in Canada, the Applicant learned Sun Li had been detained.

[5] While in Canada, the Applicant claims he sent Falun Gong materials to Sun Li via the WeChat application. He says in November 2020, he received a call from his wife, who was still in China, advising him that the Public Security Bureau [PSB] had come to his home because they knew he was sending Falun Gong materials to China. When he learned that he was being investigated by the PSB, he filed a refugee claim.

A. *RPD Decision*

[6] The RPD concluded the Applicant had not credibly established his profile as a genuine Falun Gong practitioner. The RPD found numerous inconsistencies between the Applicant's Basis of Claim [BOC] narrative and his testimony at the hearing, including his introduction to Falun Gong, whether he knew of Sun Li's initial arrest before he left China or after, the reasons for the delayed refugee application, and his limited knowledge of Falun Gong.

B. *RAD Decision Under Review*

[7] The RAD dismissed the Applicant's appeal of the RPD decision. Credibility was again the determinative issue. The RAD concluded, on a balance of probabilities, that the Applicant had not credibly established he was a genuine practitioner of Falun Gong in China or that he was wanted by the PSB.

[8] The RAD assessed the Applicant's inconsistent evidence regarding the arrests of his Falun Gong group members in China in 2017, namely whether he knew of Sun Li's arrest before he left China. In the BOC, the Applicant stated he learned of Sun Li's arrest once he arrived in Canada; but at the hearing, he asserted the arrest had prompted him to flee China. The RAD concluded this inconsistency undermined the Applicant's credibility and rebutted the presumption of truthfulness.

[9] The RAD considered the three-year delay in the Applicant seeking protection in Canada, and concluded the delay demonstrated a lack of subjective fear and undermined the credibility of

the Applicant's allegations. The RAD rejected the Applicant's argument that he lacked education or sophistication as an explanation, considering he was able to leave China with the assistance of a smuggler, and he had lived in Canada for several years without speaking English.

[10] On WeChat, the RAD concluded the RPD did not err in drawing a negative credibility finding from the lack of corroborating evidence of the alleged WeChat conversations.

[11] The RAD concluded the Applicant was not a genuine practitioner of Falun Gong. The RAD acknowledged the case law that warns against testing religious knowledge to determine religious identity, but also noted that Falun Gong is a knowledge-based practice with practitioners expected to be able to demonstrate knowledge of the fundamental principles. The RAD concluded the RPD's questions about Falun Gong were appropriate, as they related to the fundamental concepts of Falun Gong.

[12] The RAD rejected the Applicant's argument that the knowledge he demonstrated ought to be considered against his lack of education and lack of sophistication. The RAD concluded that after seven years of regular practice and study of Falun Gong, the Applicant ought to have acquired more than a shallow or superficial understanding of this knowledge-based practice. The RAD relied on the Applicant's assertion that his health improved due to his Falun Gong practice, which conveyed he was able to practice at a high-level with in-depth understanding. The *Zhuan Falun* (the key text of Falun Gong) suggests that curing illness would not occur at a basic level of understanding. The RAD concluded the Applicant's shallow understanding of Falun Gong was not in line with the health benefits he asserted he had achieved through his practice.

[13] The letters of support from a Falun Gong practitioner in Canada were found to be vague and without sufficient detail to establish the sincerity of the Applicant's belief.

[14] Finally, the RAD concluded the Applicant had not established a *sur place* claim, as his claim of practicing Falun Gong in China was found not credible. The RAD noted a high degree of proof is required for a *sur place* claim where the other elements of the claim are not credible and concluded that there was no evidence the Chinese authorities were aware of the Applicant's Falun Gong practice in Canada.

II. Issues and Standard of Review

[15] Although the Applicant raises a number of issues, they all relate to the reasonableness of the Decision. I will address these issues as follows:

- A. Are the credibility findings reasonable?
- B. Is the RAD's assessment of the Applicant's knowledge of Falun Gong reasonable?
- C. Is the *sur place* finding reasonable?

[16] The applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). A reasonable decision is one that possesses the three hallmarks of reasonableness – justification, transparency, and intelligibility – within the decision-making process (*Vavilov* at paras 86, 99). Any flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100).

[17] On a reasonableness review, the Court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125).

III. Analysis

A. *Are the Credibility Findings Reasonable?*

[18] The Applicant argues the RAD failed to apply the presumption of truthfulness from *MalDonado v Minister of Employment and Immigration*, [1980] 2 FC 302 (FCA), specifically in relation to the lack of corroborating WeChat evidence. He also argues the RAD erred in making plausibility findings, as such findings should only be made in the clearest of cases (*Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7).

[19] The RAD explicitly found the presumption of truthfulness was rebutted on the inconsistency regarding when the Applicant learned of Sun Li's arrest. The RAD then drew negative credibility findings from the lack of WeChat evidence.

[20] The RAD was entitled to draw a negative credibility inference from the failure to provide the WeChat messages, given the centrality of the WeChat exchanges to the Applicant's claim that the PSB were looking for him. It was reasonable for the RAD to expect the Applicant to produce some evidence regarding the sending of Falun Gong materials to China.

[21] The RAD considered the Applicant's argument that his lack of sophistication explains the inconsistencies in his evidence. On judicial review, the Applicant relies upon *Owochei v Canada (Citizenship and Immigration)*, 2012 FC 140 at paras 57-63 [*Owochei*] to argue that some inconsistencies were related to the use of an interpreter. However, in *Owochei* the translation issues arose where the BOC form was completed and translated in one language and testimony at the hearing was given and translated in the other language. The translator at the hearing noted the two languages were very different. The circumstances in *Owochei* are not present in this case.

[22] The presumption of truthfulness is a rebuttable presumption. The RAD reasonably noted that an adverse credibility finding could be drawn where reasonably expected evidence is not produced (*Geda v Canada (Citizenship and Immigration)*, 2022 FC 952 at paras 31-32). Further, the RAD reasonably rejected the Applicant's lack of sophistication as an explanation for the inconsistencies and the failure to produce corroborative evidence.

[23] In essence, the Applicant is asking this Court to reconsider his arguments and come to a different conclusion, which is not the role of the Court on judicial review.

B. *Is the RAD's Assessment of the Applicant's Knowledge of Falun Gong Reasonable?*

[24] The Applicant submits the RAD erred in concluding he was not a genuine practitioner of Falun Gong, as the RAD significantly understated the Applicant's knowledge of Falun Gong and reached questionable conclusions about the efficacy of Falun Gong in treating illness.

[25] In particular, the Applicant takes issue with paragraph 44 of the RAD decision, which states:

By the time of the hearing, the Appellant had professed to have been regularly practicing and studying Falun Gong for seven years. Common sense and rationality dictate that he would have acquired more than just a shallow, vague or superficial knowledge of this knowledge-based practice through his allegedly regular practice over a long span of time. Furthermore, the Appellant himself asserts in his narrative that his health improved shortly after he began practicing Falun Gong. This conveys that he was able to practice Falun Gong at a high level and with an in-depth understanding, which contradicts his assertion that he is unable to develop a sophisticated understanding of Falun Gong. For example, according to the *Zhuan Falun*, “The body purification will be done only for those who come to truly learn the practice and the Fa” and “if one could truly cure an illness and completely remove such karma, one’s level would have to be quite high.” [emphasis added] Also, “We are purifying your body, and the term is not “healing illness,” either. We just call it “purifying the body,” and we clean out the bodies of true practitioners.” [emphasis added] In order to truly cure illnesses, there must be supernormal abilities. [emphasis added] In order to cure illness or eliminate tribulations and karma, these people must practice cultivation and return to their original, true selves.” That is, the *Zhuan Falun* suggests that curing illness would not occur at a basic or unsophisticated level of practice. Therefore, the Appellant’s shallow knowledge and understanding of Falun Gong is not in line with his assertion that he achieved health benefits from Falun Gong which, according to the *Zhuan Falun*, would be achieved with a high-level practice. [Footnotes omitted] [Emphasis in original.]

[26] I agree with the Applicant that the RAD’s finding (in the above paragraph) that he could not have received health benefits without being a high-level practitioner, is an overstatement. However, that finding alone does not render the whole Decision unreasonable. I would characterize this assessment by the RAD as a superficial flaw or shortcoming that does not go to the merits of the decision (*Vavilov* at para 100).

[27] The Applicant argues that it was an error for the RAD to reject the sincerity of his Falun Gong practice based upon his imperfect knowledge of their belief system, as knowledge does not amount to sincerity of belief (per *Lin v Canada (Citizenship and Immigration)*, 2018 FC 1057 at para 20). However, while there is a low bar for religious knowledge to support a genuine belief, here, it was reasonable for the RAD to expect the Applicant to have knowledge of the basic tenets of Falun Gong commensurate with his seven years of study (*Liang v Canada (Citizenship and Immigration)*, 2022 FC 115 at paras 32-33).

[28] Finally, it was reasonable for the RAD to rely upon *Gao v Canada (Citizenship and Immigration)*, 2021 FC 271, in assessing the Applicant's knowledge of Falun Gong concepts.

[29] The Applicant has not convinced me that the RAD unreasonably assessed his knowledge of Falun Gong.

C. *Is the Sur Place Finding Reasonable?*

[30] The Applicant submits the RAD erred in failing to independently assess his *sur place* claim and instead relied on rolling credibility findings to dismiss this aspect of his refugee claim. The Applicant claims his evidence confirms his involvement in Falun Gong activities in Canada.

[31] In considering the *sur place* claim, the RAD noted the Applicant's assertions of his Falun Gong practice and being wanted in China were not credible. Having not credibly established these aspects of this claim, the RAD was entitled to import credibility findings into the *sur place* assessment (see *Zhu v Canada (Citizenship and Immigration)*, 2017 FC 615 at para 25).

[32] There must be an evidentiary basis for a *sur place* claim, and the onus is on the Applicant to demonstrate his activities in Canada have come to the attention of the Chinese authorities (*Jiang v Canada (Citizenship and Immigration)*, 2018 FC 1064 at paras 42-46).

[33] The only evidence relied upon by the Applicant in support of the *sur place* claim was a letter from a fellow Falun Gong practitioner in Canada. The letter contains little detail about the Applicant's Falun Gong practice in Canada and further states the Falun Gong group that the Applicant was part of did not meet between March 2020 and August 2021, due to the COVID-19 pandemic.

[34] In the circumstances, the RAD's assessment of the *sur place* claim was reasonable.

IV. Conclusion

[35] This Application for judicial review is dismissed. There is no question for certification.

JUDGMENT IN IMM-7214-22

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is dismissed; and
2. There is no question for certification.

"Ann Marie McDonald"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Ian G. Mason FOR THE APPLICANT

Nicole Rahaman FOR THE RESPONDENT

SOLICITORS OF RECORD:

LEWIS & ASSOCIATES FOR THE APPLICANT
Barristers and Solicitors
Toronto, ON

Attorney General of Canada FOR THE RESPONDENT
Toronto, ON