

Federal Court



Cour fédérale

Date: 20230718

Docket: IMM-3634-22

Citation: 2023 FC 982

Ottawa, Ontario, July 18, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

LIGUO SHAO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant is a citizen of China. In July 2017, he obtained a visitor's visa for a holiday in Canada. Shortly after arriving here August 1, 2017, the applicant submitted a claim for refugee protection on the basis of his fear of persecution as a Falun Gong practitioner.

[2] The Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada (IRB) rejected the claim after a hearing in February 2020. The applicant's appeal of this

decision was allowed by the Refugee Appeal Division (RAD) of the IRB and the matter was remitted to the RPD for redetermination. After a new hearing, the RPD rejected the applicant's claim again on credibility grounds.

[3] In a decision dated March 24, 2022, the RAD dismissed the applicant's appeal and confirmed the RPD's determination that the applicant is neither a Convention refugee nor a person in need of protection.

[4] The applicant now applies for judicial review of the RAD's decision under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*).

[5] As I will explain in the reasons that follow, I am not persuaded that the RAD's decision is unreasonable in any of the respects alleged by the applicant. This application for judicial review must, therefore, be dismissed.

[6] It is well-established that the RAD's decision should be reviewed on a reasonableness standard: see *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35; and *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 29. That this is the appropriate standard of review has been reinforced by *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10.

[7] 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). A decision that displays these qualities is entitled to deference from a reviewing court (*ibid.*). When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances (*Vavilov* at para 125). To set aside a decision on the basis that it is unreasonable, 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).

[8] The applicant alleged that he was introduced to Falun Gong practice by a friend in July 2015 after he began to suffer depression following the deaths of his father and his sister. He began to attend group practices in August 2015. In February 2017, one of these group practices was raided by the Public Security Bureau (PSB). The applicant was able to escape. He went into hiding until, with the assistance of a smuggler, he was able to leave China for Canada at the end of July 2017. According to the applicant, the PSB went to his home shortly after the raid and left a summons directing him to attend on February 28, 2017, for questioning about his involvement in Falun Gong. Despite the fact that the applicant did not attend, the police did not take any further action apart from allegedly visiting the applicant’s home and speaking to his wife from time to time.

[9] The Minister intervened before the RPD and filed documents establishing the following:

- The applicant had been granted a 30 day US visa for a business trip in 2004 but he had not departed when required. At the RPD hearing, the applicant admitted that he had

remained in the United States without status for four years, something he had not disclosed previously to Canadian authorities.

- The applicant applied for another US visitor's visa in February 2015 using information that differed in material respects from information the applicant provided later to Canadian authorities (e.g. concerning his employment history).
- This US visa application was refused in February 2015. The applicant did not disclose this refusal in his 2017 application for a Canadian visitor's visa. In the Schedule A Background/Declaration form the applicant completed in connection with his refugee claim, he stated that he had been refused a US visa in December 2015. Even then, this refusal was not disclosed initially when the applicant signed the form on September 9, 2017; it was only disclosed on October 12, 2017, when the applicant was interviewed by an immigration officer.
- Information the applicant provided in his 2017 application for a Canadian visitor's visa differed in material respects from information he provided subsequently in support of his claim for refugee protection (e.g. his education and employment history).

[10] At the RPD, the applicant agreed that there was false information in his US and Canadian visa applications but he attributed this to his use of smugglers.

[11] The RPD found that the applicant's account of his alleged Falun Gong practices in China was not credible. This finding was based in part on adverse findings concerning the applicant's credibility in light of his immigration history in the United States and Canada. The RPD

concluded that the applicant is not wanted by the PSB for Falun Gong activities or for any other reason. The RPD also found that the applicant had not established that he is a genuine Falun Gong practitioner in Canada or that his practice has come to the attention of authorities in China. The RPD therefore concluded that the applicant is not a Convention refugee or a person in need of protection.

[12] On his appeal to the RAD, the applicant submitted that the RPD erred in its assessment of his credibility and in its determination of the *sur place* aspect of his claim. In detailed reasons, the RAD rejected all of the grounds on which the applicant challenged the RPD's conclusions and confirmed the RPD's findings.

[13] On review, the applicant submits that the RAD's decision is unreasonable in three respects: (1) its assessment of the significance of the fact that the applicant had provided false information to US authorities in his 2015 visa application; (2) its assessment of the applicant's account of the PSB's pursuit of him; and (3) its assessment of the applicant's *sur place* claim. (Other grounds for review were raised in the applicant's written submissions but they were not pursued at the hearing of this application.)

[14] I am not persuaded that the RAD's decision is unreasonable in any of the respects alleged by the applicant.

[15] First, on the record before it, it was open to the RAD to find that the applicant's use of a smuggler in 2015 when he was not fearing persecution and his delayed disclosure of the 2015

visa refusal adversely affected the applicant's credibility. The applicant submits that the RAD erred in permitting this adverse finding to overwhelm the other evidence but I am unable to agree. In effect, the applicant is asking me to reassess the significance of this evidence and come to a different conclusion than the RAD. This is not the role of a reviewing court applying the reasonableness standard. It must also be noted that the RAD's adverse determination concerning the applicant's credibility in light of his immigration history did not rest solely on these considerations. The RAD also relied on the applicant's four year stay in the United States without status and the absence of a reasonable explanation for his failure to disclose this to Canadian authorities in a timely way. The applicant has not contested these findings in this application.

[16] Second, the applicant testified at the RPD that the PSB had returned to his home repeatedly between the time they delivered the summons in February 2017 and the applicant leaving for Canada in late July 2017. The applicant did not mention these visits in his Basis of Claim (BOC) narrative. The RAD agreed with the RPD that this omission called the credibility of the applicant's account into question. It was open to the RAD to find that these were not minor details but, rather, were significant and relatively recent events relating to the applicant's alleged persecution. The RAD did not err in finding that it would be reasonable for these events to have been included in the BOC narrative if they had occurred. It was open to the RAD to reject the applicant's evidence that he did not realize they should have been included. In this connection, the RAD also reasonably concluded that the credibility of the applicant's account was called into question by the lack of a follow-up, coercive summons after the applicant did not appear as required on February 28, 2017. Furthermore, the RAD also reasonably noted that its finding in

this regard is buttressed by the fact that a letter from the applicant's wife dated August 23, 2017, says nothing about visits to her home by the PSB.

[17] Third, the RAD agreed with the RPD that the applicant had failed to establish that he was a genuine adherent of Falun Gong in Canada. Indeed, the RAD found on a balance of probabilities that the applicant "has engaged in Falun Gong activities and has learned about the practice in Canada only for the purpose of supporting a fraudulent refugee claim." The RAD provided transparent and intelligible reasons for reaching these conclusions. The applicant has not demonstrated any basis on which to interfere with them.

[18] For these reasons, the application for judicial review will be dismissed.

[19] The parties did not propose any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-3634-22

THIS COURT'S JUDGMENT is that

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

“John Norris”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3634-22

STYLE OF CAUSE: LIGUO SHAO v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

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DATE OF HEARING: JANUARY 24, 2023

JUDGMENT AND REASONS: NORRIS J.

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