

Federal Court



Cour fédérale

Date: 20230803

Docket: IMM-3606-22

Citation: 2023 FC 1059

Ottawa, Ontario, August 3, 2023

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

**WONG AGUS SALIM
VONNY CHRISTIAN
WONG GIOVANNO CHRISTOPHER**

Applicants

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a March 25, 2022 decision [Decision] of the Refugee Appeal Division [RAD], confirming a decision of the Refugee Protection Division [RPD] that the Applicants are neither Convention refugees nor persons in need of protection

under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The Applicants assert that the Decision is unreasonable because the RAD overlooked evidence in reaching its conclusions.

[3] In my view, the Applicants have not demonstrated a reviewable error. A decision maker is not obligated to address all of the evidence on record in its reasons and the evidence highlighted by the Applicants does not contradict the RAD's findings to such an extent that the RAD was required to address it. I am satisfied that, on the basis of the evidence adduced and arguments made before the RAD, the Applicants did not discharge their burden to prove that they met the criteria for refugee protection, nor for persons in need of protection. This application for judicial review is therefore dismissed.

II. Background Facts

[4] The Applicants are a married couple and their 19-year-old son. They are citizens of Indonesia where they claim to fear persecution because of their religion and ethnicity as Christians of Chinese descent.

[5] The Applicants claim that they have long been subject to "racist comments, discrimination and fear" due to their Chinese-Christian identity. The female Applicant [Co-Applicant], Ms. Christian, was traumatized by anti-Chinese riots that occurred in 1998. The

Applicants assert that the situation has become worse in recent years since the former governor of Jakarta, a Chinese-Christian politician, was convicted of blasphemy in 2017.

[6] The Applicants note that three church bombings occurred in Surabaya in May 2018 with one of the targeted churches being located “only a few hundred meters” from the Applicants’ church. They claim that the incident left them traumatized and worried to practice their religion.

[7] Furthermore, the Applicants’ son [Associate Applicant], Mr. Christopher, allegedly faced poor treatment from a teacher who used racist insults against him and on one occasion kicked his leg. As a result, the Applicants moved Mr. Christopher to another school.

[8] Ms. Christian also fears a former co-worker, Ms. Msjene. In April 2019, Ms. Msjene allegedly became jealous and started harassing Ms. Christian after Ms. Christian received a promotion at work. Ms. Msjene was fired for making ethnic insults toward Ms. Christian and then began making threatening calls to the Co-Applicant including that she would kill Mr. Christopher if they called the police.

[9] The Applicants took Mr. Christopher out of school in July 2019. In October 2019, the Applicants fled to Canada and applied for refugee protection.

[10] On October 6, 2021, the RPD refused the Applicants’ application on the basis that while they faced discrimination, it did not amount to persecution. Moreover, the Applicants did not establish that they were unable to obtain adequate state protection.

[11] The RPD cited the *United Nations High Commissioner for Refugees Handbook*, which states that only in certain circumstances will discrimination amount to persecution such as where there are serious restrictions on a claimant's right to earn a livelihood, practice their religion, or access normally available educational facilities. The RPD found that while Mr. Christopher had changed schools, this was because Mr. Christopher believed he was being followed by an unknown person at that school. The evidence did not establish that Mr. Christopher was unable to study, or that he would be unable to do so in the future because of his ethnicity or faith. Nor did it establish that Ms. Christian or Mr. Salim was unable to secure employment or access services. The RPD also concluded that the Applicants did not establish that they were unable to attend their church; rather, it concluded they made a personal decision to stop going.

[12] The RPD noted documentary evidence regarding scapegoating of the Chinese and Christian communities by extremists in Indonesia but found the sentiment was not broadly held. It also noted that current leaders in Indonesia have acted against Islamic terrorism within the country, and that bombings of churches are isolated incidents.

III. The Decision Under Review

[13] While the RAD disagreed with some aspects of the RPD's analysis of the evidence, it confirmed that the Applicants are neither Convention refugees nor persons in need of protection.

[14] The RAD considered the gender-related aspects of Ms. Christian's claim, including being touched when she was younger and witnessing violence against women in the 1998 riots.

However, the RAD found that the experiences in her youth were isolated incidents and the conditions from 1998 when the riots occurred not ongoing.

[15] Regarding Ms. Christian's issue with Ms. Msjene, the RAD accepted that she was harassed but did not find there would be a forward-facing risk if the Applicants returned to Indonesia and Ms. Christian were to work at a different company. Moreover, Ms. Msjene was fired from her position, demonstrating that protection exists from harassment. The RAD also found that there was insufficient evidence that Ms. Msjene had gang connections or would be motivated to continue to pursue Ms. Christian.

[16] The RAD considered Mr. Christopher's claim of being bullied at school but found that there was minimal forward-facing risk and that his experiences did not rise to the level of persecution, as they did not stop him from studying or attending church.

[17] The RAD disagreed with the RPD's finding that the situation for Chinese Christians in Indonesia is improving. The RAD assessed the evidence in the National Documentation Package [NDP] and found that there is societal bias against Christians in Indonesia as a predominantly Muslim country and government laws have forced some churches to close. However, the RAD found that this does not rise to the level of persecution.

[18] The RAD considered the cumulative effects of the discrimination the Applicants had experienced and concluded that the Applicants did not face a serious risk of persecution if they returned to Indonesia.

IV. Issues

[19] The issue in this case is whether the RAD's Decision is reasonable. More specifically, the Applicants argue that the RAD's decision is unreasonable because it was selective in its analysis of the evidence.

V. Standard of Review

[20] The standard of review is reasonableness. 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" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 85). The Court, therefore, should only intervene if the decision does not meet the standard of transparency, intelligibility, and justification (*Vavilov* at paras 10, 15-17, 25, 85-86, 99).

[21] In conducting a reasonableness review, the Court must look to both the outcome of the decision and the justification of the result (*Vavilov* at para 87). However, a reviewing court must refrain from reweighing and reassessing the evidence considered by the decision maker (*Vavilov* at para 125). If the reasons of the decision maker allow a reviewing Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law, the decision will be reasonable (*Vavilov* at paras 85-86).

VI. Analysis

A. *The RAD's assessment of the evidence was reasonable*

[22] The Applicants assert that the RAD's findings were based on a selective analysis of the evidence and failed to acknowledge key evidence contrary to its conclusions. They highlight documentary evidence that they claim establishes that the Applicants would face a risk of persecution on the basis of religion, ethnicity, and in the case of Ms. Christian, gender.

[23] The Applicants rely on the case of *Cepeda-Gutierrez (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 (QL) [*Cepeda-Gutierrez*] to argue that the RAD ought to have explained its reasons for how it dealt with every piece of evidence before it.

(1) Religious persecution

[24] The Applicants cite case law for the position that it is an error for a decision maker to engage in a selective analysis of documentary evidence, accepting evidence that supported its conclusion but ignoring crucial and contradictory evidence without explanation (*Manoharan v Canada (Minister of Citizenship and Immigration)*, [1996] FCJ No 356 at para 6; *Cepeda-Gutierrez* at para 17; *De Seram v Canada (Citizenship and Immigration)*, 2007 FC 1123 at para 29).

[25] The Applicants assert that the RAD erred in finding that there was insufficient evidence that the Applicants would be unable to practice their faith in Indonesia. They also take issue with

the RAD's assessment based on the objective evidence that "a small number of recent terrorist attacks have targeted Christians, although most recent terrorism events have targeted state institutions, especially police." They assert that these findings are unsupported by a holistic assessment of the evidence.

[26] While the RAD did mention that the Applicants' church required police protection, the Applicants assert that the need for police protection suggests that they are not free to practice their religion in Indonesia—particularly because the congregation had to pay for the protection, which the Applicants characterize as a bribe. They also submit that the RAD ignored the Applicant's evidence that they would stay home instead of going to church.

[27] Regarding the incidence of terrorist attacks on churches, the Applicants assert that the RAD ignored the fact that Christians are specific targets of militant Islamist groups. They also cite objective evidence that in Indonesia there were at least two explosions in churches in 2017; three churches bombed in a targeted attack in 2018; and another terrorist attack in 2021.

[28] The Applicants also pointed to the objective evidence from item 12.3 from the NDP which states that:

In 2019, religious freedom conditions in Indonesia generally trended negatively compared to the previous years. Reports from local nongovernmental organizations indicated that the provinces of West Java, Jakarta and East Java had the highest number of incidents of religious intolerance – including discrimination, hate speech, acts of violence and rejections of permits to build houses of worship for minority religious communities.[...]

[29] They also point to evidence in the NDP of roughly 200 documented violations of religious freedom in 2016 and 2017.

[30] The Respondent asserts that the evidence cited by the Applicants does not support that they would not be able to practice their religion. The Respondent also argues that the Decision noted the existence of societal bias against Christians in Indonesia but found that it did not rise to the level of persecution.

[31] As held by the Supreme Court of Canada in *Vavilov*, reasonableness review requires a deferential approach to the decision maker and the reviewing court must read the reasons holistically and contextually (at para 97). In other words, the decision maker does not have to respond to each argument nor refer to all the evidence – indeed the decision maker is presumed to have considered all of the evidence and the arguments on the records (*Vavilov* at paras 94, 127-128; *Oluwafemi v Canada (Citizenship and Immigration)*, 2023 FC 564 at para 21).

[32] In my view, the Applicants have not rebutted this presumption. Contrary to their assertions, the RAD did not fail to assess the evidence that religious minorities are targeted by Indonesia’s militant Islamist groups or that attacks on Christians do not occur.

[33] Rather, it found that “[t]he objective evidence does not indicate that Christian churches in Indonesia are being attacked and destroyed in large numbers”. Moreover, the evidence of roughly 200 incidents on religious grounds relates to a country of 250 million people and it is not specified how many of these were committed against Christians.

[34] It is important to note that the RAD also agreed with the Applicants on various points. For instance, the RAD found that the RPD had indeed failed to comment on parts of the objective evidence that discussed the reinforcement of negative sentiment against people of Chinese ethnicity caused by the COVID-19 pandemic. The RAD also found that the RPD had failed to discuss the involvement of the Indonesian government in the protection of religious minorities' rights.

[35] The RAD also accepted the Associate Applicant's testimony regarding the difficulty to build new Christian churches and the fact that this made it difficult for them to practice their faith. Nevertheless, the RAD also considered that within this testimony, the Associate Applicant had mentioned that additional security was provided by the police at other churches and that overall, the objective evidence did demonstrate that Christians are generally free to practice their faith all across the country.

[36] The RAD also accepted the Applicants' submission regarding societal bias against Christians, as Indonesia is a predominantly Muslim country, but held that this did not mean that the government was directly persecuting Christians of Chinese ethnicity.

[37] Therefore, the RAD's findings in relation to the allegation of religious persecution, when read holistically and contextually, are reasonable in light of the record and arguments made before the RAD.

[38] The evidence presented by the Applicants on judicial review is also not sufficiently contradictory or relevant to the RAD's findings such that the RAD was obligated to address it specifically in the Decision. The RAD appropriately considered the evidence and arguments made before it in concluding that, while there are incidents on religious grounds in Indonesia, this situation does not amount to persecution in this case.

(2) Ethnic persecution

[39] The Applicants assert that the RAD did not justify its reasoning that the recent increase in anti-Chinese sentiment did not lead to a high level of violence against persons of Chinese ethnicity.

[40] The Applicants assert that the RAD erred in relying on the conclusion of a report by the Australian Department of Foreign Affairs and Trade [DFAT] that "... Chinese Indonesians currently face a low risk of violence. Persistent anti-Chinese sentiment may lead to low levels of societal discrimination". They point out that this report was published in January 2019 before the COVID-19 pandemic, which has increased anti-Chinese sentiment in Indonesia. While the effect of the pandemic was noted by the RAD, they assert the RAD did not explain its conclusion in paragraph 45 of the Decision that the evidence did not "establish that there is generally a high level of violence directed against persons of Chinese ethnicity in Indonesia, or that if returned there, the [Applicants] will be persecuted".

[41] The Applicants assert that the RAD failed to consider articles contradicting the DFAT report such as the BTI 2020 Country Report, which cites survey evidence that a majority of

Muslim respondents indicated they were opposed to a Chinese district head. The same article questions whether recent mitigations of conflict in Indonesia will actually serve to endanger minorities in the long-term.

[42] The Applicants rely on *Junusmin v Canada (Citizenship and Immigration)*, 2009 FC 673 [*Junusmin*], in which the Court found that the decision maker erred in not addressing evidence contradictory to its conclusion that no objective fear of persecution for Chinese Christian Indonesians exists. However, in *Junusmin*, the decision maker's finding relied on an excerpt stating that discrimination and harassment of Chinese Indonesians have "declined compared with previous years". The Court in *Junusmin* states that "the combination of a dearth of analysis and failure to adequately address the evidence in its context warrants this Court's intervention" (at para 39). Here, there is no such dearth of analysis. The RAD's analysis was far more comprehensive than that in *Junusmin*.

[43] The Respondent submits that the RAD noted the rise in anti-Chinese sentiment following the pandemic. It also asserts that the articles presented by the Applicants are not material to the finding that the Applicants were able to study, obtain employment, and practice their religion and likely would be able to on their return to Indonesia.

[44] In my view, the Applicants are mistaken in asserting that the RAD "failed to adequately explain why it preferred the Australian DFAT report over the other documentary evidence." The evidence they highlight does not contradict the RAD's conclusion that while there is an increase in anti-Chinese sentiment, the level of violence remains low. While the situation for Chinese

Christians in Indonesia may give rise to discrimination, in the RAD's conclusion, their religion, when combined with their ethnicity, does not support that they will be subjected to discrimination that amounts, even on a cumulative basis, to persecution. That conclusion is reasonable on the basis of the evidence and arguments made before the RAD.

[45] The RAD came to this conclusion after conducting a *de novo* analysis of all of the evidence submitted by the Applicants including their oral testimony. It then decided to base its conclusion on the Australian DFAT report to support its position that there was insufficient evidence that the Applicants would face a serious forward-facing risk of persecution. The RAD was entitled to proceed as it did as this objective evidence was not directly contradicted by other equally persuasive evidence (*Shala v Canada (Citizenship and Immigration)*, 2016 FC 573 at para 19).

[46] Moreover, the Applicants do not point to any evidence in the record that the rise in anti-Chinese sentiment resulted in increased violence. Rather, they point to evidence that Indonesian Muslims would not approve of an ethnic Chinese district head and that there was an increase in anti-Chinese posts on social media following the onset of the pandemic.

[47] Therefore, in my view, the Decision is reasonable. The RAD justified in a transparent and intelligible manner its conclusions in determining that the Applicants had not discharged their burden of proof. The arguments of the Applicants, including the evidence they cite, are not sufficiently contradictory to justify the intervention of the Court.

(3) Gender-based persecution

[48] The Applicants submit that the RAD ignored evidence from the Indonesian National Commission on Violence against Women, cited in the NDP, indicating that violence against women is on the rise in the country. Moreover, they assert that as a woman, and person of Chinese heritage, Ms. Christian is particularly vulnerable to gender-related threats.

[49] I agree with the Respondent that Ms. Christian's claim was not based on the threat of sexual violence. Moreover, the Applicants do not appear to dispute the RAD's findings regarding the specific threat posed by Ms. Msjene.

[50] As found by the RAD, there is no evidence that gender-related threats against Indonesian women of Chinese ethnicity persist or amount to persecution, including against Chinese Christian women.

[51] The Applicants also do not point out to any objective evidence showing that Chinese women are more subject to persecution than any other women in Indonesia are.

[52] It is important to note that the RAD considered the *Chairperson's Guideline 4: Women's Refugee Claimants fearing Gender-Related Persecution* to make its decision. It was therefore attentive to the Co-Applicant's reality and her possible reluctance to describe her experiences in more details.

[53] Therefore, I agree with the RAD that the incidents that occurred when the Co-Applicant was young do not support a forward-facing risk of persecution. They are isolated events that are insufficient to establish a serious possibility of persecution.

[54] In my view, the Applicants have not demonstrated a reviewable error in the RAD's assessment of the evidence. The decision is intelligible and reasonable.

VII. Conclusion

[55] For these reasons, this application for judicial review is dismissed. The Applicants have not met their burden of establishing that the religious and ethnic discrimination amounted to persecution. The gender-related harassment experienced by the Co-Applicant during her youth also does not demonstrate that she faces a forward-facing risk of persecution now.

[56] The parties have not proposed a question for certification and I agree that none arises.

JUDGMENT in IMM-3606-22

THIS COURT'S JUDGMENT is that:

1. The Applicants' application for judicial review is dismissed.
2. No question of general importance is certified.

"Guy Régimbald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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