Federal Court  Cour fédérale

Date: 20240126

Docket: IMM-2352-23

Citation: 2024 FC 132

Ottawa, Ontario, January 26, 2024

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

JIANRUI GE
CHUNCHUN ZHENG

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS FOR JUDGMENT

I. Overview

[1] The Applicants are citizens of China who seek judicial review of a decision by a Senior Immigration Officer [Officer] denying their Pre-Removal Risk Assessment [PRRA] applications pursuant to section 112 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] As acknowledged by their counsel, the Applicants failed to appear for removal on April 1, 2023. Applying the clean hands doctrine, I exercise my discretion to dismiss this application without deciding it on the merits.

II. Background

[3] The Applicants are a married couple who fear persecution based on their alleged membership in the Church of Almighty God [the Church], an outlawed religious organization in China. They entered Canada in March 2015 with temporary resident visas. The Applicants then filed refugee claims, alleging that their house church was raided and that the Chinese Public Security Bureau was looking for them in China.

[4] In July 2015, the Refugee Protection Division [RPD] rejected their claims based on credibility concerns. It found that, on a balance of probabilities, the Applicants were not genuine Church of Almighty God adherents and therefore would not be perceived as such by Chinese authorities.

[5] In October 2022, the Applicants filed PRRA applications, stating that despite the RPD's rejection of their claims, they continued to attend the Church. In support, they submitted numerous documents as new evidence. The Officer accepted and considered these documents in assessing the Applicants' PRRA applications.

[6] By decision dated January 26, 2023, the Officer rejected the Applicants' PRRA applications. While the Officer acknowledged that the country conditions documentation demonstrate that the situation in China is concerning for members of the Church of Almighty God,

they found that the Applicants failed to produce sufficient evidence to demonstrate that they are members of the Church.

[7] In terms of the new evidence, the Officer generally found it of little probative value in establishing the Applicants' faith. Ultimately, the Officer determined that the additional evidence was insufficient to overcome the RPD's credibility findings.

[8] On March 16, 2023, the Applicants were directed to report for removal on April 1, 2023. They applied to the Canada Border Services Agency for deferral of their removal, but that application was refused. The Applicants were also unsuccessful before this Court in having their removal stayed pending the disposition of this judicial review application.

[9] The Applicants failed to report for their COVID-19 tests on March 31, 2023 and failed to appear for removal on April 1, 2023.

III. Analysis

[10] In accordance with the "clean hands" doctrine, the Court may decline to grant a discretionary remedy based on an applicant's misconduct. The doctrine has been applied in judicial review applications, including in the immigration context. More specifically, where an applicant failed to appear for removal from Canada, as in this case, the Court has dismissed the application, without adjudicating the merits: *Amorocho Sanabria v Canada (Citizenship and Immigration)*, 2023 FC 803; *Akinwumi v Canada (Citizenship and Immigration)*, 2022 FC 1599 [*Akinwumi*]; *Ngo*

Sen v Canada (Citizenship and Immigration), 2020 FC 331 [*Ngo Sen*]; *Wu v Canada (Citizenship and Immigration)*, 2018 FC 779 [*Wu*].

[11] In considering whether to exercise my discretion to dismiss this application based on the clean hands doctrine, I am guided by the relevant factors set out by the Federal Court of Appeal in *Canada (Minister of Citizenship and Immigration) v Thanabalasingham*, 2006 FCA 14 [*Thanabalasingham*]. These factors include: (i) the seriousness of the applicant's misconduct and the extent to which it undermines the proceeding; (ii) the need to deter others from similar conduct; (iii) the nature of the alleged administrative unlawfulness and the apparent strength of the case; and (iv) the importance of the individual rights affected and the likely impact upon the applicant if the impugned administrative action is allowed to stand: *Thanabalasingham* at para 10.

[12] The Applicants' counsel acknowledges that the Applicants' failure to respect the outcome of the stay motion and their failure to appear for removal is serious misconduct. As determined by this Court, this particular misconduct has significant consequences for both the removal process and the overall integrity of the immigration regime: *Ngo Sen* at para 27; *Debnath v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 332 at paras 23-25.

[13] There is also no question that deterrence is a critical consideration to ensure the proper functioning of Canada's immigration system: *Ngo Sen* at para 28. As Justice Zinn aptly stated, "[c]ondoning misconduct sends the wrong message to those who respect and observe the law even when their claims have been unsuccessful": *Akinwumi* at para 14.

[14] The Applicants' counsel argues that the Court should exercise its discretion and determine the application on its merits because of the strength of their case. In addition to relying on her written and oral submissions, counsel referred to the Court's decision on the stay motion, wherein Justice Brown determined that the Applicants met the first branch of the test, namely that there was a serious issue to be tried. I am not persuaded that the finding on the stay motion supports that the Applicants have a strong case. Indeed, as Justice Brown noted in his decision, on a stay motion, the "bar is low" in assessing whether there is a serious issue to be tried on the underlying application: *Ge v Canada (Citizenship and Immigration)*, 2023 CanLII 24804 (FC) at para 5.

[15] I am not satisfied that the Applicants have a strong case. The Applicants' risk of harm has now been assessed and rejected by two different decision-makers. The RPD dismissed their refugee claim based on an adverse credibility finding. Then, after considering the new evidence submitted by the Applicants, the PRRA Officer ultimately determined that the evidence was insufficient to overcome the RPD's credibility findings.

[16] The jurisprudence is clear that while decision-makers are entitled to significant deference when making sufficiency of evidence findings, they must be explained with reference to the evidence on the record or by providing a rationale for the finding: *Ahmed v Canada (Citizenship and Immigration)*, 2022 FC 618 at para 35; *Sarker v Canada (Citizenship and Immigration)*, 2020 FC 154 at para 11; *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at para 35. Here, the record demonstrates that the Officer did just that. For each insufficiency of evidence finding, the Officer explained why the particular evidence had little probative value or why they were assigning little weight to it.

[17] The Applicants essentially disagree with the weight accorded by the Officer to the evidence. As the Supreme Court makes clear, however, it is not for the reviewing court to reweigh and reassess the evidence: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 125.

[18] Finally, in assessing the likely impact on the Applicants if the PRRA decision stands, the lack of merit of the underlying application is also relevant: *Ngo Sen* at para 31; *Wu* at para 17. The RPD concluded that, on a balance of probabilities, the Applicants were not genuine Church of Almighty God adherents and thus would not be perceived to be by the Chinese authorities. After considering all of the new evidence, the PRRA Officer determined that the Applicants had failed to demonstrate "with sufficient evidence a direct or personal connection to their stated risk of persecution, possible torture or other cruel and unusual treatment by Chinese state officials": Officer's Notes to File dated January 26, 2023 at p 8. The finding of both the RPD and the PRRA Officer is that the Applicants would not personally be at risk if they return to China.

[19] Having considered the relevant factors, I am satisfied that the application should be dismissed due to the Applicants' misconduct in failing to appear for removal.

[20] The parties agreed that there is no question for certification and I agree that none arises in this case.

JUDGMENT in IMM-2352-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Anne M. Turley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2352-23
STYLE OF CAUSE:	JIANRUI GE, CHUNCHUN ZHENG v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JANUARY 23, 2024
JUDGMENT AND REASONS FOR JUDGMENT:	TURLEY J.
DATED:	JANUARY 26, 2024

APPEARANCES:

Anna Davtyan	FOR THE APPLICANTS
Nimanthika Kaneira	FOR THE RESPONDENT

SOLICITORS OF RECORD:

EME Professional Corporation Barristers and Solicitors Thornhill, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT