

Federal Court



Cour fédérale

Date: 20240207

Docket: IMM-2274-23

Citation: 2024 FC 116

Ottawa, Ontario, February 7, 2024

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

**THI HUE HOANG
VAN THUY LE**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision (the “Decision”) by the Refugee Appeal Division (the “RAD”) affirming the Refugee Protection Division’s (the “RPD”) finding that the Applicants are neither Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the “Act”).

II. Background

[2] The Applicants are common law spouses and are citizens of Vietnam. They are both 27 years old.

[3] In early 2018, while still in Vietnam, the female Applicant (“Principal Applicant”) began practicing Hoa Hao Buddhism. Her practice was constrained to her home or the homes of others within a group of fellow practitioners in her local area.

[4] In November 2018, the Principal Applicant joined other practitioners on a visit to an ancestral Buddhist temple in a different area of the country. It is not clear what the purpose of the visit was, nor the size of the group. The temple’s location was distant from the Principal Applicant’s city of residence, and required a two-day drive. Local police prevented the Principal Applicant’s group from completing the visit, and they were forced to return. The Principal Applicant says that her local group of practitioners did not meet after this incident because they were afraid.

[5] The Principal Applicant left Vietnam in February 2019. She eventually arrived in Canada on a tourist visa in August 2019.

[6] It was shortly after her arrival in Canada that the Principal Applicant’s relationship with the male Applicant began. The male Applicant does not practice Hoa Hao Buddhism. He entered

Canada separately in December 2018 on a student visa. The Applicants have a child, who was born in Canada in May 2020.

[7] The Applicants claimed refugee protection in April 2021, citing religious persecution. The Principal Applicant was the principal claimant and the male Applicant was the associate claimant.

[8] The RPD denied the Applicants' claim. Regarding the male Applicant, the RPD observed that he denied having a fear of persecution in Vietnam due to the Principal Applicant's religious practice. The RPD found that the male Applicant was in fact concerned about the economic hardship that a return to Vietnam would cause. The RPD concluded that the male Applicant did not have a credible fear of persecution if returned to Vietnam.

[9] The RPD accepted that the Principal Applicant practices Hoa Hao Buddhism. However, the RPD rejected her assertion that she was pursued or wanted by Vietnamese authorities due to the events of November 2018. When asked by the RPD whether Vietnamese police knew that she had attended the events as a Hoa Hao Buddhist, the Principal Applicant confirmed that they did not.

[10] On the topic of religious practice more generally, the RPD noted that Vietnam permits religious practice within a specific framework established by the state. Citing evidence from the National Documentation Package for Vietnam, the RPD also observed that religious practitioners are unlikely to be mistreated unless Vietnamese authorities believe that the religious group or organization is engaging in political activity.

[11] The RPD also acknowledged that the relationship of Hoa Hao Buddhists with Vietnamese authorities is unique. Many practitioners believe that Vietnamese communists murdered the founder of Hoa Hao Buddhism. Vietnamese authorities, in turn, believe Hoa Hao Buddhists to be anti-communist. The RPD acknowledged this “political undercurrent”. The RPD also noted that Hoa Hao Buddhists have seen their properties confiscated, their texts prohibited, their religious celebrations banned, and their leaders surveilled. According to one publication cited by the RPD, gatherings of 20-25 people or more are likely to incur state harassment, arrest, and questioning. Vietnamese police often record the names of those in attendance and their relationships.

[12] Nevertheless, the RPD also observed that many followers of Hoa Hao Buddhism are able to practice their faith, and that they are not all subject to mistreatment. The RPD went on to assess whether the Principal Applicant’s individual practice would incur a serious possibility of persecution. The RPD noted that the Principal Applicant does not know other Hoa Hao Buddhists in Canada, does not participate in religious gatherings, and has not encouraged her spouse to join her in her faith. The Principal Applicant also testified that religion is a personal matter to be left to the individual, and that the only gatherings she attended before November 2018 were small and local. The RPD concluded that the events of November 2018 were anomalous, as the Principal Applicant had confirmed that she was there without really understanding the purpose of the visit, and only because she was “influenced” to do so by a fellow practitioner.

[13] Because the Principal Applicant’s practice is private and non-political, the RPD found that she would not face a serious possibility of religious persecution in Vietnam.

[14] The Applicants appealed the RPD's decision to the RAD. The RAD denied the appeal. After summarizing the RPD's findings, the RAD held that the RPD:

1. canvassed the relevant evidence appropriately;
2. considered the unique history between Vietnamese authorities and Hoa Hao Buddhists;
3. was correct to observe that not all Hoa Hao Buddhists are harassed by Vietnamese authorities; and
4. was correct to conclude that, while the Principal Applicant's practice could reasonably lead to discrimination, it is unlikely to incur a serious possibility of persecution.

[15] Because the male Applicant's claim is based on his association with the Principal Applicant, the RAD found that he too does not face a serious possibility of persecution.

III. Issue

[16] Was the RAD's finding that the Applicants would not face a serious possibility of persecution in Vietnam reasonable?

IV. Analysis

[17] The standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25).

[18] The Applicants state that the RAD's finding that the Principal Applicant would not face a serious possibility of persecution in Vietnam is unreasonable. They submit several arguments in support of their position. None of the arguments address the male Applicant's claim.

[19] The Applicants argue that the RAD's reliance on evidence discussing religious freedom in Vietnam generally is unreasonable. They say that such evidence is not specific to Hoa Hao Buddhism.

[20] I disagree. Hoa Hao Buddhism is one of the religions practiced in Vietnam: evidence discussing the circumstances of religious groups in Vietnam generally is therefore relevant. Even though such evidence is not specific to Hoa Hao Buddhists, it carries at least some probative value with respect to their circumstances, and it was open to the RAD to cite and rely on the substance of that evidence, given that the RPD and RAD went on to specifically consider Hoa Hao Buddhism.

[21] The Applicants also say that the general evidence relied on by the RAD was focused on registered religious groups, not unregistered groups like the Principal Applicant's. This is incorrect. The very excerpt that the Applicants cite in their written submissions make this clear:

Many religious leaders across the country reported improving conditions compared with prior years, such as better relations between unregistered religious groups and local authorities and a reduction in aggressive forms of harassment. Members of recognized groups or those with certificates of registration said they

were generally able to practice their beliefs with less government interference [. . .]

[Emphasis added]

[22] The Applicants also take issue with the RAD's finding that "there are millions of Hoa Hao Buddhists in Vietnam who follow their faith and act in accordance with their beliefs". The Applicants understand the RAD's conclusion to mean that millions of Hoa Hao Buddhists follow their faith "freely", without the need to "keep their faith or aspects of their faith secret". The Applicants say that this observation is misleading and unsupported by the evidence.

[23] The Applicants' reading of the RAD's comments disregards the broader context in which the comments were made. Contrary to the Applicants' submission, the RAD is not suggesting that millions of Hoa Hao Buddhists are able to practice their faith "freely". Rather, it observes that there is a large community of Hoa Hao Buddhists in Vietnam, that individual practices differ, and that Vietnamese authorities do not harass or persecute every Hoa Hao Buddhist within Vietnam:

[34] While the RPD acknowledged the Appellants' counsel's post-hearing submissions, which provided an overview of mistreatment of Hoa Hao followers in Viet Nam, the RPD found that they did not grapple with the duality of religious adherence in Viet Nam and the fact that many religious adherents can practise their faith. The RPD found that the Appellants' counsel's submissions did not explain how and why the Principal Appellant, with the profile she established, falls in the category of a Hoa Hao practitioner who faces a serious possibility of persecution. The RPD found that the specificity of religious practice in Viet Nam and divisions within Hoa Hao practice and the corresponding treatment by authorities indicates that not all non-registered Hoa Hao followers will be treated in the same way.

[Emphasis added]

[24] Far from lacking any evidentiary foundation, as the Applicants suggest, the RAD's reasoning referenced evidence contained within the National Documentation Package for Vietnam, as well as the Principal Applicant's testimony before the RPD. It was reasonable.

[25] Third, the Applicants argue that the RAD's findings suggest that the Principal Applicant would be safe from persecution if her practice remains private and non-political. In effect, the Applicants' position is that the RAD denied the Principal Applicant's claim because she would be able to accommodate the restrictions imposed by Vietnamese authorities by limiting or contorting her religious practice to those restrictions.

[26] The Applicants' argument misconstrues the RAD's finding. In fact, the RAD arrived at the opposite conclusion, namely that the Principal Applicant would not have to change her religious practice, given that her practice was, and remains, inherently private and non-political. By her own admission, the Principal Applicant's practice is constrained to her home, and she has not participated in religious gatherings outside of small and private groups in her local area in Vietnam, aside from the November 2018 event.

[27] It was reasonable for the RAD to infer from this that the Principal Applicant considers her practice of Hoa Hao Buddhism to be a private and personal affair, and that she is unlikely to be harassed or persecuted by Vietnamese authorities for her practice.

[28] The Applicants are correct to say that, while the Principal Applicant did indeed testify before the RPD that she did not attend any Hoa Hao Buddhist gatherings in Canada, she attributed

this to the fact that she is parenting a young child and does not have the time. As well, the Principal Applicant indicated to the RPD that she hopes to join gatherings of Hoa Hao Buddhists in Canada. However, this does not diminish the RAD's broader point, which is that the Principal Applicant considers her faith to be a private and personal affair, and that she is unlikely to be harassed. Possible discrimination, absent more indicia of personal risk, does not rise to persecution.

[29] Finally, the Applicants say that the RAD's reasons are contradictory. They point to two findings in particular: (1) the Principal Applicant's group of practitioners did not meet after the events of November 2018, and (2) the Principal Applicant would be able to gather privately with other practitioners in her local area if returned to Vietnam.

[30] I find no such contradiction. The RAD found that the events of November 2018 were not part of the Principal Applicant's individual practice, that she joined the visit at another person's request without knowing its details, and that her practice was and remains a personal and non-political affair. The RAD's conclusion that the Principal Applicant would be able to gather with others privately in her local area takes these findings into account. These findings are not in conflict.

[31] The RAD's conclusion that the Applicants would not face a serious possibility of persecution in Vietnam is reasonable.

V. Conclusion

[32] The application is dismissed.

JUDGMENT in IMM-2274-23

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: THI HUE HOANG, VAN THUY LE v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

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