

Federal Court



Cour fédérale

Date: 20240328

Docket: IMM-4271-23

Citation: 2024 FC 492

Toronto, Ontario, March 28, 2024

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

VI HIEN LU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an application for judicial review of a decision [Decision] by the Refugee Appeal Division [RAD] affirming the decision of the Refugee Protection Division [RPD] that the Applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] As explained in greater detail below, this application is dismissed, because the Decision is reasonable.

II. Background

[3] The Applicant is a citizen of Vietnam who claims fear of religious persecution due to his Christian faith.

[4] In 2016, the Applicant and his wife separated after just over a year of marriage. The Applicant was very upset by the separation. In March 2017, his cousin tried to console him and spoke to him about Christianity. The Applicant started attending his cousin's house church in May 2017 and found that this new faith brought him comfort.

[5] In June 2019, two members of the Applicant's house church were arrested by local police. The Applicant alleges these members were arrested for engaging in proselytism. The church suspended its service following these arrests.

[6] The Applicant decided to leave Vietnam to be able to practice his religion freely. He hired an agent to help obtain his Canadian visa and came to Canada in February 2020, applying for refugee protection in July 2020.

[7] Following his hearing, the RPD rejected the Applicant's claim on August 17, 2022, finding that his fear of religious persecution was not objectively justified based on the country documentation. He appealed the RPD's decision to the RAD, which dismissed his appeal in the Decision, that is the subject of this application for judicial review.

III. Decision under Review

[8] The RAD accepted that the Applicant is a genuine Christian. In considering the Applicant's religion as the basis for a nexus to a Convention ground for refugee protection, the RAD considered the subjective component (whether the Applicant has a fear of persecution if he returns to Vietnam) and whether there was an objective basis for the fear. The RAD conducted an independent assessment of the evidence and agreed with the RPD's finding that there was insufficient evidence of an objective basis for the Applicant's fear of persecution.

[9] The RAD conducted an overview of religious freedom in Vietnam and found that, while the Constitution of Vietnam provides for the right to freedom of belief and religion, there is significant government regulation over religion in the interests of national security and social unity. The RAD considered that religious denominations and organizations in Vietnam are required to register with, and be recognized by, the government before conducting any religious activities or gatherings, as well as the fact that Protestantism (the Applicant's faith) is the third largest religious organization recognized by the government.

[10] The RAD considered the Applicant's argument that the RPD erred in its analysis of his well-founded fear of persecution by not following the principles established in *Chan v. Canada (Minister of Employment and Immigration)*, [1995] 3 SCR 593, 128 DLR (4th)213 [*Chan*] when applying the objective part of the test. The RAD considered *Chan*, which held that a claimant may be able to establish that their fear is objectively well-founded, even in the absence of corroborating documentary evidence, by providing testimony regarding similarly situated

individuals. Moreover, *Chan* also held that the situation of each person must be assessed on its own merits.

[11] The RAD considered the Applicant's submission that the two members of his house church who were arrested were similarly situated individuals. However, the RAD found that the Applicant's details about the arrest were limited, and that he had no firsthand knowledge of why they were arrested or the outcome of the arrest. The RAD also considered the National Documentation Package (NDP) for Vietnam, which reports that most often Christians who are harassed or persecuted in Vietnam are also members of minority ethnic groups, lived in rural areas, were leaders of a church, or engaged in political activity that was critical of the government. Based on insufficient evidence of the circumstances that led to the arrest of the church members, such as their ethnicity or whether they were critical of authorities, the RAD found there was insufficient information to determine that the house church members were similarly situated people or to rely on their arrest to conclude that the Applicant could be at risk if he returns to Vietnam. The RAD also considered the fact that the Applicant's cousin remained in Vietnam without being arrested or experiencing any problems with the authorities.

[12] The Applicant also argued that the RPD erred by failing to consider *The Law on Belief and Religion* in its analysis of the country condition evidence [CCE]. The RAD found it was unclear from the Applicant's argument how *The Law on Belief and Religion*, which requires registration of religious groups, impacted the Applicant's particular circumstances. The RAD disagreed with the Applicant's argument that the RPD erred in its analysis of the CCE. The RAD noted that the RPD acknowledged that the Vietnamese government restricts religious freedom and that Christians can face mistreatment by the authorities but that, in considering the

Applicant's particular circumstances, the RPD concluded there was no well-founded fear of persecution. The RAD found that it was insufficient for the Applicant to simply rely on CCE to establish a personal risk of persecution, as he was required to provide sufficient evidence of his particular situation and circumstances.

[13] The RAD also found that there was insufficient evidence to support the Applicant's argument that the discrimination he would face in Vietnam would amount to persecution. The RAD concluded the Applicant had not provided evidence of any discrimination or persecution that he personally faced due to his religion. While the CCE provided examples of harassment and persecution of Christians, these examples were not applicable to the Applicant because the reports of persecution related mainly to rural areas and minority ethnic groups, or religious leaders and pastors, or where members of religious groups were also engaged in political or human rights advocacy. The RAD considered the Applicant's argument that it is not possible to separate politics and religion when the government regulates religious authority. However, it found that the CCE demonstrated harassment or persecution occurred where Christians were also involved in political or human rights advocacy, and the Applicant had no such involvement.

[14] The RAD acknowledged that religious freedom includes the right to practice one's faith in the manner they choose. However, the RAD found the Applicant had not provided sufficient evidence as to why he could not attend a registered church, as opposed to an unregistered church. The RAD considered the Applicant's argument that registered churches are required to worship the state ahead of God, but it found that the Applicant had provided no evidence to support this assertion and that there was no such evidence in the CCE.

[15] Finally, the RAD considered the *sur place* aspect of the Applicant's claim, based on the Applicant's religious activity in Canada. The RAD found there was insufficient evidence that the Applicant's participation in Christian activities in Canada could put him at risk of a serious possibility of persecution if he returns to Vietnam.

[16] The RAD found that the Applicant had not established there was a serious possibility of persecution if he returns to Vietnam, or that there was a likelihood, on a balance of probabilities, of a risk to his life, or of torture, or cruel and unusual treatment or punishment.

IV. Issues

[17] The sole issue for the Court's determination is whether the Decision was reasonable. The parties agree, and I concur, that the reasonableness standard of review applies.

V. Analysis

[18] The Applicant's written submissions raise a number of arguments challenging the reasonableness of the Decision. However, at the hearing of this application, his counsel focused upon his argument related to the RAD's analysis and finding surrounding the possibility of the Applicant attending a registered church. The Applicant submits that this analysis and finding are determinative. That is, if they are reasonable, then the Decision will withstand judicial review. If this analysis is not reasonable, the Decision itself is not reasonable, as the RAD's consideration of the Applicant's religious profile and resulting risk of persecution turned significantly on this analysis and the resulting finding.

[19] This aspect of the Decision is found in paragraph 34, which reads as follows:

34. I recognize that the concept of religious freedom is broad and includes the right to practice one's faith in the manner they choose. The Appellant argued that he cannot practice at a registered church because they operate differently than unregistered churches, since they are required to worship the state ahead of God. However, the Appellant did not provide any evidence to support his statement, and I did not find any in the NDP. The Appellant never attended a registered church in Vietnam, so he has no firsthand knowledge as to how they operate. Also, he stated that the unregistered church that he used to attend no longer exists. Therefore, he would have to find a new church if he returned to Vietnam, and he has not provided sufficient evidence as to why he could not attend a registered church in his city.

[20] The Applicant notes that the RAD found him to be credible, including in respect of the religious beliefs he held. Relying on the explanation in *Zhou v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1210 [*Zhou*], that it is not for the RPD to determine the reasonableness of an applicant's faith and how they should practice it, the Applicant submits that the RAD erred in requiring him to demonstrate more than his genuine religious opposition to attending a state-registered church.

[21] I agree with the Respondent's position that it is necessary to consider the particular analysis that led to the conclusion in *Zhou* that the RPD had erred. The Court found it unclear from the RPD's decision whether its reasoning was that there was no doctrinal distinction between a Chinese state church and an underground church or rather was that the applicant should practice his religion at a state church despite his beliefs that those official churches did not accurately reflect Christian teachings (at para 21). If the RPD's decision was to be interpreted as relying on the latter analysis, that was an error, because it was not for the RPD to determine

how the applicant should practice his faith (at para 27). If it was the former analysis, then the RPD was still in error, because the Court found that analysis to have ignored clear documentary evidence of theological differences (at para 23-26).

[22] I interpret the RAD's finding, in paragraph 34 of the Decision in the case at hand, to be based on an absence of evidence of doctrinal or theological differences between unregistered and registered churches in Vietnam. The Applicant argues that he cannot practice at a registered church, because they are required to worship the state ahead of God. The RAD found that neither the Applicant nor the CCE supported that doctrinal distinction.

[23] Consistent with that interpretation, the Applicant's submissions at the hearing of this application focused significantly on the CCE, which he argues contradicts the RAD's finding. The Applicant acknowledges that the CCE may not literally say that registered churches put the state ahead of God. However, he emphasizes that the evidence demonstrates that registered churches are subject to state interference and control, which supports the reasonableness of the Applicant's belief that they put the Vietnamese state ahead of God.

[24] I agree with the Respondent's position that the Applicant's argument amounts to a request that the Court re-weigh the CCE, which is not the Court's role in judicial review. In *Zhou*, the Court identified CCE that contradicted the RPD's findings such that the principles of *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) [*Cepeda-Gutierrez*] applied, supporting an inference that the RPD had overlooked that evidence (at para 25). I do not find the CCE on which the Applicant relies in the case at hand to similarly

contradict the RPD's finding that the evidence does not support the Applicant's assertion that registered churches are required to worship the state ahead of God. As the Respondent submits, the CCE demonstrates state interference with and control of registered churches, but the Applicant has not pointed to evidence of doctrinal or theological differences in practice, in comparison with unregistered churches, that would undermine the reasonableness of the RPD's analysis based on the principles in *Cepeda-Gutierrez*.

[25] Rather, this case is similar to *Li v Canada (Citizenship and immigration)*, 2018 FC 982, in which the RPD had considered the applicant's stated reason for not wishing to pursue the practice of his faith in a state-sponsored church but concluded that the evidence was insufficient to support that reason. As the RPD had not ignored or overlooked evidence, the Court found (at para 18) that its decision was reasonable and distinguishable from the circumstances in *Zhou*.

[26] I agree with the Applicant's position that the RPD's analysis and conclusion surrounding the possibility of practising at a registered church is determinative. As I find that analysis and conclusion reasonable, this application for judicial review must be dismissed.

[27] Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-4271-23

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4271-23

STYLE OF CAUSE: VI HIEN LU v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 26, 2024

JUDGMENT AND REASONS: SOUTHCOTT J.

DATED: MARCH 28, 2024

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