

Federal Court



Cour fédérale

Date: 20240627

Docket: IMM-11110-22

Citation: 2024 FC 1003

Toronto, Ontario, June 27, 2024

PRESENT: The Honourable Justice Battista

BETWEEN:

KIM CHI HOANG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a dismissal of the Applicant's appeal by the Refugee Appeal Division ("RAD"). The primary issue is whether the RAD reasonably assessed the evidence before it regarding the risk faced by the Applicant in Viet Nam based on her practice of the Hoa Hao faith. For the reasons that follow, I find the RAD's decision and reasons to be reasonable and I dismiss the application.

II. Background

[2] The Applicant is a citizen of Vietnam who fears persecution in her country of origin as a practitioner of Hoa Hao Buddhism, a practice she started while living in Canada. Both the Refugee Protection Division (“RPD”) and the RAD found the Applicant credible in her evidence of religious practice, but concluded that based on her profile as an individual practitioner of Hoa Hao Buddhism, she did not face persecution in Vietnam. They therefore rejected her claim for refugee protection. The Applicant challenges this position, arguing that the RAD erred in finding that she could practice her faith without risk in Vietnam.

III. The RAD’s decision

[3] Before deciding on the merits, the RAD refused to assess new evidence submitted by the Applicant, namely a letter from then Prime Minister Stephen Harper to a Hoa Hao Buddhist leader to thank him for participating in the “Vietnam Religious Freedom Roundtable” and dated April 11, 2014. The RAD found the letter not to be relevant because it did not relate to the credibility of the Applicant, the sincerity of her faith or to general country conditions in Vietnam. It therefore rejected the new evidence. This was not identified as a basis for challenging the RAD’s decision.

[4] On the merits of the appeal, as stated above, the RAD accepted that Ms. Hoang was a genuine Hoa Hao practitioner. The RAD noted that even though freedom of religion is constitutionally protected in Vietnam, the state can control religious practices and that evidence relating to Hoa Hao Buddhism on this matter is “mixed,” with the existence of repression or risk related to certain profiles of Hoa Hao practitioners. It described objective country evidence on

these issues, including evidence raised by Ms. Hoang, but noted that police harassment targeted Hoa Hao practitioners with an additional characteristic, such as politically active practitioners and those who practice in public.

[5] The RAD also considered the Applicant's practice of her faith. It noted that she had testified about having a simple practice relating to veganism on holidays and daily prayer, that she practiced alone or occasionally in group gatherings, and that she was not politically active[RAD decision, para. 13]. It also noted that she was from a large urban environment that was more favourable to freedom of religion according to the objective country evidence. It then concluded that, based on the evidence she referred to in the documentary evidence before the RAD, her method of practice was not one that would likely attract attention and hostility from the Vietnamese government.

[6] The RAD concluded that Ms. Hoang was not in need of protection based on sections 96 and 97 of the IRPA and dismissed her appeal.

IV. Issue

[7] In my view, the sole issue is whether the RAD reasonably assessed the Applicant's personal evidence and the country condition documentary evidence she advanced to support her claim.

V. Analysis

[8] As stated above, I determine that the RAD reasonably assessed the evidence before it.

[9] The Applicant's first challenge to the RAD's decision is that the RAD misapprehended the documentary evidence supporting the claim. The Applicant alleges that documentary evidence regarding country conditions in Vietnam revealed the scope of risk faced by Hoa Hao practitioners to be much wider than the risk described by the RAD. The Applicant points to documentary evidence indicating that simply being a Hoa Hao practitioner from an unrecognized or unregistered sect is sufficient to attract risk.

[10] Despite counsel for the Applicant's able arguments on this point, it is my view that the RAD dealt with country condition documentary evidence reasonably. It acknowledged the mixed nature of the documentary evidence, and it calibrated the risk faced by Hoa Hao practitioners using clear criteria that had support in the documentary evidence. That criteria included the level of political activity practiced by Hoa Hao practitioners, the place of residence of Hoa Hao practitioners, the degree to which their religious practice is public, in addition to the type of Hoa Hao sect to which practitioners belong.

[11] Counsel for the Applicant argued that where there is documentary evidence pointing to risk for a group of religious practitioners, and other documentary evidence confining that risk to a subset of those practitioners, the former type of documentary evidence should prevail and provide the basis for refugee protection. However, *Vavilov* prohibits me from stepping into the shoes of the RAD decision maker, preferring one type of documentary evidence over another: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, para. 83. In the absence of serious errors such as ignored or unreasonably dismissed evidence, my role is to review, and not to decide the issue myself.

[12] The Applicant's second challenge to the treatment of evidence before the RAD concerns evidence specific to the nature of her religious practice. The Applicant alleges that the RAD mischaracterized the degree to which her personal practice is public. It is also alleged that the RAD's conclusions were based on the expectation that the Applicant could avoid risk by practicing her faith secretly.

[13] I disagree with this allegation that the RAD expected the Applicant to practice secretly in order to avoid risk. The Applicant points to no section of the decision which supports this position, and I can find none.

[14] By contrast, the RAD drew from the Applicant's own testimony about the nature of her religious practice to conclude that she would not be at risk. In doing so, it made no unreasonable findings regarding the Applicant's testimony and the documents she provided which illustrated the nature of her practice. This evidence revealed that Ms. Hoang sometimes attended group prayers and practices [RAD decision, para. 49] but that she primarily practiced from home, and that her faith came from the inner heart and there was no need for Temple [RAD decision, para. 20]. Ultimately, however, the RAD did not focus its conclusion solely on whether Ms. Hoang would attend religious group practices or ceremonies, but also on whether she was likely to be politically engaged [RAD decision, para. 20].

VI. Conclusion

[15] The evidence before the RAD was indeed mixed and some of it does point to an ongoing risk for at least some Hoa Hao Buddhists solely on the basis of that status. However, other evidence pointed to the fact that someone in the Applicant's situation would not face a risk of

persecution because more than the simple practice of the Hoa Hao religion was required. Despite the Applicant's able arguments, I am not convinced that there are any material errors in the RAD's decision that render it unreasonable. The application is dismissed.

JUDGMENT in IMM-11110-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question of general importance for certification.

“Michael Battista”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-11110-22

STYLE OF CAUSE: KIM CHI HOANG v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 25, 2024

JUDGMENT AND REASONS: BATTISTA J.

DATED: JUNE 27, 2024

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