

Federal Court



Cour fédérale

**Date: 20130830**

**Docket: IMM-9837-12**

**Citation: 2013 FC 924**

**Ottawa, Ontario, August 30, 2013**

**PRESENT: The Honourable Mr. Justice Annis**

**BETWEEN:**

**WENHAN XU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review, pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision that the applicant was not a Convention refugee or a person in need of protection.

**Background**

[2] Mr. Xu is a citizen of China. He states that in January 2008 he began suffering from headaches. Medical treatment did not help. A classmate recommended trying Falun Gong, in secret

because it was illegal. Mr. Xu did try it and found that it helped with his migraines. In July 2008, he joined a group which practiced secretly in members' homes. After six months his health was greatly improved.

[3] On June 15, 2009, Mr. Xu came to Canada on a student visa. He joined the Falun Dafa study group in Toronto. On August 30, 2010, his mother telephoned and told him that the Public Security Bureau [PSB] had searched the family's house, taken away some of his papers, and accused him of being involved in illegal Falun Gong activities. The PSB told his parents to have him return to China and surrender into custody. They said that they had already arrested three members of the group including the friend who had introduced him to Falun Gong.

[4] Mr. Xu, realizing that he could not return to China, made a refugee claim in Canada. He has since learned that his friend was sentenced to three years in jail and the other two group members to two years. The PSB continued to inquire about him at his parents' house as of March 2012.

[5] Mr. Xu also states that his common-law spouse Xiholan Wang is expecting their first child and that he wants the freedom to have three children. He fears persecution from the authorities in Henan province for having had a child without being married and he fears sterilization.

### **Impugned decision**

[6] The Refugee Protection Division [the Board] heard the case on August 7, 2012. A negative decision was rendered on August 28, 2012. The Board reviewed the claimant's story. It took into consideration the difficulties he faced in establishing his claim, including cultural factors, the

environment of the hearing room, and the stress of responding to questions through an interpreter. Nonetheless, it found that the credibility of the claimant's written narrative and oral testimony was the determinative issue; it found that he was not a credible witness concerning his membership as a Falun Gong practitioner and was not wanted by the PSB.

## Issues

[7] The issues raised are:

- Did the Board err by making unreasonable credibility and plausibility findings?
- Did the Board err in finding that the applicant does not face persecution in Henan province?

## Standard of review

[8] In *Su v Canada (MCI)*, 2013 FC 518, a recent case where another Chinese applicant claimed refugee status based on Falun Gong practice, Justice Gleason explained:

7 Prior to discussing each of the errors that applicant alleges the RPD made, it is useful to review the general principles applicable to the assessment of the Board's credibility determinations. Such determinations are reviewable on the reasonableness standard and must be afforded significant deference (see e.g. *Aguebor v (Canada) Minister of Employment and Immigration* (1993), [1993] F.C.J. No. 732 at para 4, 160 NR 315 [*Aguebor*]; *Frederick v Canada (Minister of Citizenship and Immigration)*, 2012 FC 649 at para 14). As I noted in *Rahal v Canada (Minster of Citizenship and Immigration)*, 2012 FC 319 at para 42 [*Rahal*]:

[T]he starting point in reviewing a credibility finding is the recognition that the role of this Court is a very limited one because the tribunal had the advantage of hearing the witnesses testify, observed their demeanor and is alive to all the factual nuances and contradictions in the evidence. Moreover, in many cases, the tribunal has expertise in the subject matter at issue that the reviewing

court lacks. It is therefore much better placed to make credibility findings, including those related to implausibility. Also, the efficient administration of justice, which is at the heart of the notion of deference, requires that review of these sorts of issues be the exception as opposed to the general rule.

**8** In terms of the bases upon which the Board may reasonably rely for an adverse credibility finding, it is well-established that discrepancies between the version of events offered by a claimant at various times provide a solid basis for adverse credibility determinations (see e.g. *He v Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 1107, 49 A.C.W.S. (3d) 562 (CA); *Rajaratnam v Canada (Minister of Employment and Immigration)*, [1991] F.C.J. No. 1271, 135 NR 300 (CA); *Jin v Canada (Minister of Citizenship and Immigration)*, 2012 FC 595 at para 11 [*Jin*]; *Wei v Canada (Minister of Citizenship and Immigration)*, 2012 FC 911 at para 59). Likewise, lack of ability to recall detail - especially in circumstances where it ought to be remembered - provides a tribunal a reasonable basis for rejecting testimony (see e.g. *Ma v Canada (Minister of Citizenship and Immigration)*, 2011 FC 417 at paras 31-33; *Li v Canada (Minister of Citizenship and Immigration)*, 2012 FC 998 at para 18; *Pjetri v Canada (Minister of Citizenship and Immigration)*, 2013 FC 376 at para 43). The RPD may additionally rely on implausibility in a claimant's version of events to found an adverse credibility determination, provided the implausibility is actual as opposed to illusory (see e.g. *Aguebor; Alizadeh v Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 11, 38 A.C.W.S. (3d) 361 (CA); *Shahamati v Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 415 (CA)). Finally, a witness' demeanor or manner of testifying may be relied on to ground an adverse credibility finding, but it is preferable it not be the sole basis for such a finding (see e.g. *Rahal* at paras 42, 45).

[9] In the present case, the standard of review is reasonableness for both issues; the contested credibility and plausibility finding and the contested factual finding.

## Analysis

[10] The applicant argues that the Board conducted a microscopic analysis inconsistent with the Federal Court jurisprudence which indicates that sincerity of belief, rather than depth of knowledge, is the correct basis for assessment (*Huang v Canada (MCI)*, 2012 FC 1002, at paras 12, 15). He argues that the Board misconstrued the evidence concerning warrants and summonses by the PSB, relying on an outdated 2004 document to conclude that a summons would have been left with the family, when in fact correct police procedure is not to leave a summons with anyone but the person in question. A more recent 2010 document indicated that it is rare for the PSB to leave arrest warrants. He also argues that the Board misconstrued the evidence about repercussions for the families of Falun Gong practitioners; while the document it cited described a broad spectrum of harassment actions, it did not suggest that all of these measures are carried out in every case.

[11] Upon reading the relatively lengthy transcript of the hearing, I cannot agree that the Board took a “microscopic” approach to this case. The applicant has challenged some aspects of the two overall conclusions that he lacks credibility in respect of being an adherent of Falun Gong and in respect of being a target of persecution by the PSB. The entirety of the record supports the conclusion that the decision was reasonable in respect of the credibility of the version of events described by the applicant. See *Newfoundland and Labrador Nurses’ Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 12-15.

[12] The applicant argues that, in this case, the Board engaged in an overly stringent and microscopic examination of the applicant’s knowledge of Falun Gong. It cited as examples the inability of the applicant to respond to questions about the significance of May 13 as Falun Dafa

Day and about what lecture of the Zhuan Falun addressed the topic of a healing. He questions whether his answers were in fact wrong, but more importantly submits that they represent too stringent a standard, bearing in mind that the sincerity of his beliefs are central to this issue.

[13] These questions were related to specific evidence in the applicant's personal information form and the medical issue which brought him to Falun Gong in the first place. Contextually however, these were only two out of a number of questions asked of the applicant on this subject. Significantly, the applicant could not name all four obligations that a Falun Gong practitioner is required to fulfill on a daily basis. I conclude that this evidence would be highly probative as to the sincerity of the belief in respect of its daily practice. In combination with the remaining evidence, including significant credibility deficiencies on other issues, I judge this sufficient to support the Board's conclusion on the applicant's commitment to Falun Gong.

[14] I similarly find reasonable the conclusion, that the applicant was not a target of persecution by the PSB, which the Board reached as part of its conclusion that an arrest warrant or summons should have been left with the claimant's family. The challenge to reliance on this finding is based upon a line of cases cited by the applicant which point to the perils of the Board "drawing adverse credibility inferences on the basis of expectations about what Chinese authorities are likely to do, or on an assumption that law enforcement practices will be consistently uniform"; *Weng v Canada (MCI)*, (25 October 2012), Ottawa IMM-1536-12 (FC), at para 6; *Zhou v Canada (MCI)*, 2012 FC 1252, at paras. 12-19.

[15] Again, this finding should be considered in the context of the complete record where there is considerable evidence to support a conclusion that the applicant was not credible in his assertion of persecution by the PSB. To begin with, this issue is related to the serious credibility shortcomings of the applicant's submission that he came to Canada to study. He did not produce any documentation in support of his testimony of having studied at Algonquin College and other language schools in Canada. His reasons explaining the absence of supporting documentation also lack credibility (lost documents, currently unable to obtain documents from the college, did have some documents but because of his poor English did not know what they said and no longer has those documents) and this despite the offer by the Board to allow him time to provide any documentation evidencing attendance at some kind of learning establishment in Canada.

[16] The applicant's story of persecution as it is related in the transcript lacks an air of reality in many respects. Apparently his problems started with faxing information on Falun Gong to his parents so that they could provide it to his friend in China. The PSB apparently learned that he was involved because, as recounted by the applicant at the hearing:

Coincidentally on that particular occasion when the police went in my house my parents were home, and then I was just send... I just transmit two piece of fax material, falun gong material, and it was still on the fax machine, and they were discovered by the police. And the same time they told my parents that my co-practitioner, Lin Yuan, had been arrested.

[17] Similarly, the lack of creditworthiness of the evidence of the alleged mistreatment of the applicant's parents at losing their employment due to his involvement in Falun Gong, which the Board considered in relation to the summons issue, is supported from the record. It was only mentioned by the applicant in response to the questions as to why the authorities would return seven

or eight times to his parents' residence. The Board's expectation was that "that such compelling and important information would have been included in the [PIF] amendment and therefore [it drew] a negative inference from its omission". The Board further commented that "to have allegedly attended his family home on 7-8 occasions would indicate that the PSB had far more than a casual interest in the claimant. The absence of a summons when one should reasonably have been issued damages the credibility of the claimant."

[18] Contextually, the Board's conclusion on the likelihood of a summons being issued is reinforced. In any event, this issue aside, there is a reasonable foundation in the evidence for the panel to have doubted the credibility of the applicant as being a target of persecution by the PSB.

### **Conclusion**

[19] In light of the above, I find that the applicant has not succeeded in establishing that the Board's decision was unreasonable, either with respect to the negative credibility findings in respect of the genuineness of his religious beliefs or with respect to persecution by Chinese authorities. As such, his application must be dismissed.



**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is dismissed.

“Peter Annis”

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-9837-12

**STYLE OF CAUSE:** WENHAN XU v.  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** July 25, 2013

**REASONS FOR JUDGMENT  
AND JUDGMENT:** ANNIS J.

**DATED:** August 30, 2013

**APPEARANCES:**

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