

CANADA / JUDGMENT

TB9-19683

COURT

Refugee Appeal Division

DECIDED

29 July 2020

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RAD File / Dossier de la SAR : TB9-19683

Private Proceeding / Huis clos

Reasons and decision ? Motifs et décision

Persons who are the subject of the appeal

XXXX XXXX

Personnes en cause

Appeal considered / heard at

Montreal, QC

Appel instruit / entendu à

Date of decision

July 29, 2020

Date de la décision

Panel

Me Jo-Anne Pickel

Tribunal

Counsel for the persons who are the subject of the appeal

Swathi Sekhar

Conseil des personnes en cause

Designated representative

N/A

Représentant(e) désigné(e)

Counsel for the Minister

N/A

Conseil du ministre

REASONS FOR DECISION

OVERVIEW

- [1] I dismiss this appeal for the reasons that follow.
- [2] XXXX XXXX is an ethnic Tibetan who was born in India in 1974 to Tibetan parents. He alleges that he took part in a number of demonstrations in India between 2008 and 2018 to protest China's human rights violations against Tibetans. He alleges that police mistreated him and other protestors during these protests. He also alleges that, in 2018, the police seized his Registered Foreigners Certificate (RC), which is a document that allows Tibetan refugees to stay in India. The only fear of persecution that Mr. XXXX alleged before the RPD was that, without his RC, he feared that he would be deported to Tibet/China where he would face persecution due to his religious beliefs. Mr. XXXX traveled to the United States XXXX XXXX2018XXXX XXXX XXXX XXXX XXXX into Canada later that month.
- [3] The RPD found that it had several reasons to doubt the truthfulness of Mr. XXXX testimony. The RPD found that India was a country of reference in this case because Mr. XXXX is an Indian citizen by birth and that he did not genuinely try to acquire Indian citizenship. It found that he failed to establish on a balance of probabilities that he faced any significant impediment that would prevent him from accessing Indian citizenship. The RPD did not find credible the mistreatment that Mr. XXXX alleged by the police due to inconsistencies in his evidence on this issue. It also did not find credible that the Indian police seized his RC because he had managed to leave India without any problems and he could provide only vague evidence about the bribe he allegedly paid to obtain a fake RC in order to leave the country.

DECISION

- [4] My role is to look at all the evidence and decide if the RPD made the correct decision.¹ I find that the RPD was correct to find that Mr. XXXX is neither a Convention refugee nor a person in need of protection. I agree with the RPD that India is a country of reference in this case. It was not contested that Mr. XXXX has a legal right to Indian citizenship. I find that he did not establish any significant impediments to his exercise of the citizenship rights to which he is legally entitled. Even if there may have been non-significant impediments, he did not make reasonable efforts to overcome them. Finally, I agree with the RPD that Mr. XXXX has not established a serious possibility that he would be persecuted if he returns to India or a likelihood that he would be subjected personally to any of the types of serious harm that would make him a person in need of protection in relation to India.

PROPOSED NEW EVIDENCE AND REQUEST FOR IN-PERSON HEARING

[5] According to the law,² I can only accept evidence that:

- i. arose after the RPD decision; or
- ii. was not reasonably available at the time of the decision; or
- iii. that the Appellant could not reasonably have been expected in the circumstances to bring to the RPD before the decision.

[6] If the evidence meets one or more of these requirements, I must decide if the evidence is new, credible and relevant before I can accept it.³ It is well-established that claimants must put their best case forward to the RPD and that they are not permitted to seek to bolster their case through the admission of new evidence on appeal that they reasonably could have been expected to provide to the RPD. The RPD's decision in this case is dated June 24, 2019. Therefore, this is the date in relation to which the proposed new evidence must be assessed.

[illegible]

[8] The copy of the university degree pre-dates the RPD decision in this case. However, I agree with counsel that, in the circumstances of this case, Mr. XXXX could not reasonably have been expected to submit it to the RPD before it rendered its decision. While I find that the XXXX XXXX is admissible, for the reasons set out below, it does not alter any of my conclusions in this case.

[9] The article that counsel submitted is titled "The unintended consequences of India's policy on citizenship for Tibetan refugees". It discusses how, with the support and assistance of India and international aid agencies, Tibetan refugees in India have not only attained self-sustenance but also successfully reconstructed their social, political and religious institutions in exile. However, it discusses certain consequences Tibetan refugees have faced as of March 2017 when they apply for Indian citizenship in the form of four conditions imposed by the Indian government. Counsel argues that the article is admissible as it provides "new" information regarding the repercussions for Tibetan refugees upon acquiring an Indian passport and expands upon the limited information in the National Documentation Package for India. I do not agree that the information in the article is "new" as it dates from 2017 and even the article itself predates the RPD decision in this case. Mr. XXXX has provided no explanation for why he could not have provided the evidence to the RPD before it rendered its decision in this case. Therefore, I find the article inadmissible as he reasonably could have provided the article or the information from the article to the RPD before it rendered its decision.

Request for in-person hearing

[10] The RAD only has the power to hold an in-person hearing if it has admitted new evidence that raises an issue with respect to the credibility of the person who is the subject of the appeal, is central to the decision with respect to the claim and, if accepted would justify allowing the claim.⁴ I find that the XXXX XXXX that I have admitted as new evidence does not raise an issue regarding Mr. XXXX credibility and, as noted above, it does not alter my decision regarding the appeal in this case.

ANALYSIS OF THE MERITS

India is a country of reference

Legal test

[11] As noted by the RPD, and not disputed by counsel, the applicable legal test is the one adopted by the Federal Court of Appeal in Williams⁵ and Tretsetsang.⁶ The Court in Williams found that persons having a right to citizenship are considered nationals of a country if citizenship is within their control. In Tretsetsang, the majority of the Federal Court of Appeal held that a claimant who alleges the existence of an impediment to exercising his or her rights of citizenship in a particular country must establish, on a balance of probabilities:

- a) The existence of a significant impediment that may reasonably be considered capable of preventing the claimant from exercising his or her citizenship rights of state protection in that country of nationality; and
- b) That the claimant has made reasonable efforts to overcome such impediment and that such efforts were unsuccessful such that the claimant was unable to obtain the protection of the state.⁷

[12] The majority of the Court in Tretsetsang noted that what will constitute reasonable efforts to overcome significant impediments in any particular situation must be determined on a case-by-case basis. It also stated that a claimant will not be obligated to make any effort to overcome such an impediment if he or she establishes that it would not be reasonable to require him or her to make such an effort.⁸ The Federal Court further clarified in Namgyal that the question to be asked is whether it was reasonable to expect someone in the claimant's position "with her specific attributes" to take additional steps to have her citizenship recognized.⁹

[13] Finally, I note that the decision in Tretsetsang is instructive not only because it sets out the applicable legal test but also because the facts in Tretsetsang were similar to those in the present case in several respects. Like Mr. XXXX, the claimant in the Tretsetsang case was an ethnic Tibetan born in India to Tibetan parents between 1950 and 1987. Also, like Mr. XXXX XXXX the claimant in Tretsetsang did not have an Indian passport or birth certificate. In addition, like Mr. XXXX XXXX he had an Indian Identity Certificate (IC) but no RC because it

had been seized by Indian authorities. Finally, like Mr. XXXX XXXX the claimant in Tsetsang feared deportation to China. The Federal Court of Appeal in Tsetsang upheld the RAD's conclusion that the claimant had Indian citizenship and had failed to establish that his Indian citizenship rights would not provide him with state protection.

No significant impediments to exercising citizenship rights in this case

- [14] As discussed further below, Mr. XXXX new counsel on appeal advances many arguments that have no basis in the actual evidence given by Mr. XXXX before the RPD. I will address all of her arguments below.
- [15] Mr. XXXX counsel does not dispute on appeal that Mr. XXXX is a citizen of India by birth because he falls within the scope of the law granting citizenship to persons born in India between 1950 and 1987.¹⁰ Instead, counsel takes issue with the RPD's finding that there were no significant impediments that would prevent Mr. XXXX from accessing his Indian citizenship.
- [16] I agree with counsel that there is a distinction between a right to Indian citizenship and a right to an Indian passport. I note that the RPD in this case focused at times on the right to obtain a passport rather than the right to citizenship. In doing so, it applied the kind of analysis that the Federal Court of Appeal warned against in Tsetsang. In that case, both the majority and the dissent agreed that the relevant issue is the right to citizenship not the right to a passport. The majority rejected the question that had been certified by the Federal Court because it linked citizenship rights to the right to obtain a passport. The majority made clear that "the relevant right of citizenship for the purposes of s. 96 of the [Immigration and Refugee Protection Act] is not the right to obtain a passport but the right that would entitle the claimant to the state's protection."¹¹ Having said this, I note that the jurisprudence following Tsetsang has treated a claimant's right to obtain a passport as an indicator of the ability to exercise their citizenship rights.¹²
- [17] I do not agree with counsel that the RPD erred in failing to consider evidence relating to the four conditions that the Indian government has imposed since June 2017 for Tibetans who wish to apply for an Indian passport. The conditions are discussed in the article I have found inadmissible. While I have found the article inadmissible, the four conditions imposed by the Indian government since 2017 are discussed in Federal Court and RAD case law.¹³ Tibetans who wish to apply for an Indian passport must:
- a) Relinquish their RC and IC;
 - a) Vacate designated Tibetan refugee settlements;
 - b) Forego any benefits they may be receiving from the Central Tibetan Administration; and
 - c) Submit a declaration that they are not in receipt of benefits, including subsidies granted pursuant to an IC.

- [18] Counsel argues that it was an error for the RPD not to question Mr. XXXX about the impact of applying for an Indian passport and his beliefs about the conditions set out above. If counsel is taking the position that her client believes that he would face any unreasonable consequences associated with obtaining an Indian passport, it was open to counsel to specify them in the appeal materials. The only impact that counsel asserts that Mr. XXXX would face are the following: the fact that he had lived in a Tibetan refugee settlement in India his entire life before coming to Canada, the fact that he worked XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX and the fact that applying for an Indian passport might entail foregoing key aspects of Mr. XXXX political and cultural identity.
- [19] I do not agree with these arguments made by counsel. It is evident, that Tibetans who wish to apply for an Indian passport must make a personal choice regarding whether they keep the documentation and the benefits to which they are entitled as refugees or, instead, whether they take advantage of the rights associated with Indian citizenship. In my view, the personal choice that Mr. XXXX has to make in order to exercise his Indian citizenship rights do not rise to the level of a significant impediment on his exercise of his citizenship rights. Mr. XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX before leaving the country. There was no evidence that he could not occupy the position XXXX XXXX if he exercised his right to Indian citizenship. Likewise, even if he would have to relinquish his IC and RC, this would not prevent him from embracing his Tibetan political and cultural identity in other ways. Finally, in terms of the impact on him of leaving the refugee settlement, I note that Mr. XXXX has come to Canada in order to seek refugee protection. If he were to be successful in his quest, it would mean giving up his right to reside on a Tibetan refugee settlement in India. He was willing to give up residence in this settlement to come to Canada, therefore I do not find that the requirement that he give up his residence on the refugee settlement in order to exercise his Indian citizenship rights rises to the level of a significant impediment of the kind discussed in Tretsetsang and related case law.
- [20] Counsel argues that there are additional practical impediments that Mr. XXXX would face in obtaining an Indian passport given that he does not have a birth certificate. As noted above, the key issue is not the obtention of a passport but instead Mr. XXXX access to the citizenship rights to state protection to which he is legally entitled. Nevertheless, even if one considers his ability to obtain a passport as one aspect of his exercise of citizenship rights, I do not find that the evidence establishes that Mr. XXXX lack of a birth certificate amounts to a significant impediment to his obtaining a passport.
- [21] As noted by the RPD, various types of documents, other than birth certificates, can be used to prove a person's date of birth when they are applying for a passport. Based on the university degree admitted as new evidence, the RPD erred in finding that Mr. XXXX likely would be able to submit his university degree in order to prove his date of birth since his date of birth does not appear on the degree. However, I find on a balance of probabilities that Mr. XXXX would have other documents to establish his date of birth since his Identity

Certificate (IC) contains his date of birth. The IC is the travel document which permits Mr. XXXX to travel internationally and it is the document on which a visa is placed. When he applied for an IC, Mr. XXXX would have had to submit documents to prove his date of birth to the passport office which is the entity that issues ICs.¹⁴ Therefore, I find on a balance of probabilities, that he would have documentation that would permit him to exchange his IC for an Indian passport.

- [22] For all these reasons, I do not agree with the arguments made by counsel as to why the RPD erred in finding that there were no significant impediments to Mr. XXXX exercising his citizenship rights in India.

Lack of reasonable efforts to overcome any impediments

- [23] Even if I had found that the impediments set out above rise to the level of being significant impediments to Mr. XXXX exercise of his citizenship rights (which I do not), I find that Mr. XXXX failed to make reasonable efforts to overcome these impediments.
- [24] It is significant that Mr. XXXX is not a person with limited education, skills or work experience. He is XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX in India and he managed to leave India to make his way to the United States and then to Canada to claim refugee status. He is thus capable of taking reasonable steps to inquire into his rights if he needs to.
- [25] Mr. XXXX testified that he tried to apply for a passport in 2014 but did not try again until he came to Canada. He testified that, in 2014, the authorities told him that he required a birth certificate. At the hearing, Mr. XXXX conceded that he was aware of the High Court rulings in 2016 which ordered the state authorities to issue passports to Tibetans born between 1950 and 1987. I disagree with Mr. XXXX new counsel on appeal that it is evident from Mr. XXXX testimony before the RPD that he believed that he still required a birth certificate to obtain a passport even after the High Court rulings. In fact, when the RPD asked Mr. XXXX whether he tried to apply for a passport in India after the court rulings, Mr. XXXX said no. When asked why not, he said that he did not see the need to since he had his Yellow booklet (Identity Certificate).¹⁵ It is evident that Mr. XXXX took no reasonable steps to inquire whether he could obtain a passport following the High Court decisions because he did not feel the need to as he could use his Identity Certificate to travel.
- [26] I also do not agree with counsel that any skepticism Mr. XXXX may have felt about the process would justify his failure to take reasonable steps to obtain a passport in India. This is especially the case given the court ruling that specifically ordered the government to issue passports to persons who, like him, were born between 1950 and 1987 and the government's acceptance of that ruling.
- [27] Finally, I do not agree that Mr. XXXX arrests by the police for protesting justifies his failure to take reasonable steps to obtain a passport from passport authorities. First, as noted in the next section, I agree with the RPD that there are several credibility concerns with Mr. XXXX

account of his arrests. Even setting those aside, there was no evidence in this case to support counsel's argument since Mr. XXXX raised no such concerns in his testimony. Instead, his testimony was simply that he saw no need to apply for a passport since he had an Identity Certificate.¹⁶

- [28] For all the above reasons, I do not agree with counsel that Mr. XXXX made reasonable efforts to overcome any impediments he may have faced to exercise his citizenship rights in India.
- [29] In summary, Mr. XXXX is a citizen of India by birth and he has not established that there exist any significant impediments preventing him from exercising his citizenship rights in India. To the extent that there may exist non-significant impediments to his exercise of citizenship rights, he has failed to make reasonable efforts to overcome such impediments.

No risk of persecution or serious harm in India

- [30] In the appeal memorandum, Mr. XXXX new counsel seeks to argue that Mr. XXXX would face a serious possibility of persecution in India. I cannot accept her arguments for several reasons.
- [31] The first and main reason is that Mr. XXXX himself never alleged a fear of persecution at the hands of anyone in India. In answer to the question in the Basis of Claim form which asks claimants to list all the countries where they believe they are at risk of serious harm, Mr. XXXX only listed China/Tibet. He did not list India. Likewise, the only fear he alleged in his written narrative was a fear of being deported to China/Tibet. Further, when the RPD specifically asked Mr. XXXX at the hearing what or who he was afraid of in India, he replied that, since his RC was taken by the police he fears that he would be sent back to Tibet of China if he were to enter India.¹⁷ Based on the evidence in this case, Mr. XXXX only subjective fear of persecution relating to India is a fear of being deported to Tibet/China. There is no evidence in this case of Mr. XXXX of having any subjective fear of persecution at the hands of state authorities in India except in relation to a fear of deportation.

Fear of deportation

- [32] With respect to Mr. XXXX fear of deportation, I agree with the RPD that his allegation that the India police seized his RC in March 2018 was not credible. As noted by the RPD, Mr. XXXX obtained an Exit Permit to leave India and would have had to present his RC to obtain such a permit.¹⁸ When the RPD asked Mr. XXXX about this, he testified that he paid someone to obtain the Exit Permit for him since the police had seized his RC. However, Mr. XXXX was extremely vague in terms of the details surrounding who he paid and how he got in touch with this person. All he could say is that someone told him about someone else who could get the Exit Stamp for him.¹⁹ He could provide no details about who the someone was who put him in touch with the person who obtained the Exit Permit. I agree with the RPD that Mr. XXXX testimony was so vague as to lack credibility. Even if the National Documentation Package for India does indicate that many applicants have complained of

having to pay bribes to acquire Exit Permits, the NDP does not indicate that this is the situation in all cases. Just because many people have complained about having to pay bribes, this does not establish that it is more likely than not that Mr. XXXX had to pay a bribe to obtain an Exit Permit in this case. In my view, if Mr. XXXX had in fact paid a bribe, as he alleged, he should have been able to provide more detail about the circumstances surrounding the bribe.

- [33] In the appeal memorandum, Mr. XXXX new counsel advances a further argument related to the RC that is difficult to understand. She notes that it is implicit in the RPD's decision that it did not believe that Indian authorities seized Mr. XXXX RC and that, instead, he used it to obtain an Exit Permit before leaving India. I agree with counsel up to this point. Then, relying upon a report from the Tibet Justice Center,²⁰ counsel states that Mr. XXXX would have had to relinquish his RC to Indian authorities to secure the Exit Permit prior to leaving India. She then states "thus if the Appellant was in possession of his IC and a valid pre-issued Exit Permit as he testified, he would have had no difficulty leaving the country." That may well be true, but he would have obtained the Exit Permit by submitting his RC to authorities, thus contradicting his testimony that his RC was seized by police. Therefore, I do not accept that counsel's argument supports the credibility of Mr. XXXX allegation that the police seized his RC.
- [34] Counsel then argues that, even if Mr. XXXX was not entirely forthcoming about the circumstances surrounding the bribe to obtain a fake RC, this does not automatically lead to a finding that he is generally not credible. I agree with the case law cited by counsel in which the court has found that whether or not a person tells the truth about his or her travel documents has little bearing on whether they are a refugee. However, in this case, Mr. XXXX whole case as it was framed before the RPD revolves around the police seizing his RC and his fear of deportation because of the loss of his RC. If it is not credible that the police seized his RC, then the whole case that he put before the RPD must fail.
- [35] Finally, I find that, even if it were true that the police seized Mr. XXXX RC, I do not agree with counsel that this would expose Mr. XXXX to deportation or persecution in India. Counsel seeks to rely upon documents that relate to stateless Tibetans in India to argue that Tibetans living without an RC in India face serious risks including arrest, detention, police harassment, fines and deportation to China.²¹ The evidence on which counsel seeks to rely upon also predates the 2016 Indian High Court decisions, and the government's acceptance of those decisions, finding that Tibetans born in India between 1950 and 1987 are to be treated as Indian citizens by birth.²² As noted above, Mr. XXXX is not a stateless national, he is a citizen of India and, as set out above, there are no significant impediments to his exercise of his citizenship rights in India. Therefore, there is insufficient evidence to support Mr. XXXX's claim that he, as a citizen of India, would be deported to China/Tibet even if he no longer has an RC.

[36] As noted above, Mr. XXXX did not allege any fear of persecution due to the expression of his political opinion or arrests by the police in India. Therefore, any allegation that he has a well-founded fear of persecution based on his political opinion in India must fail due to a lack of evidence of subjective fear of such persecution. Also, Mr. XXXX did not allege a risk of being killed or subjected to cruel and unusual treatment or punishment by police or any state authority if he were to return to India. In my view, any attempt by his new counsel to now assert such a risk is not credible. As noted above, Mr. XXXX specifically noted in his Basis of Claim form that the only country in which he feared serious harm was Tibet/China. The only evidence he provided as to a risk of serious harm was in relation to a risk of deportation to Tibet/China.

[37] In addition, I agree with many of the reasons provided by the RPD for why it found Mr. XXXX account of his arrests and mistreatment by the police not credible. While I disagree with some of the reasons provided by the RPD, I find that the credibility issues on which it was correct were sufficient to find Mr. XXXX account of his arrests and mistreatment by the police to lack credibility.

[38] Mr. XXXX testified that he participated in about 18 or 19 protests in India against Chinese involvement in Tibet and that he and others were arrested at four of them: XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX

[39] I do not agree with counsel that the RPD erred in finding that Mr. XXXX failed to provide a satisfactory explanation for an inconsistency in his evidence with regard to how long he was detained by police on XXXX XXXX XXXX XXXX.

[40] As noted by the RPD, in his written narrative, Mr. XXXX alleged that he was arrested by police XXXX XXXX XXXX and detained three days each time. When the RPD asked him whether he was detained during the XXXX XXXX XXXX XXXX arrest, Mr. XXXX replied, yes, that he was detained for 2 to 3 hours and then released.²³

[41] When the RPD asked him to explain the discrepancy between this testimony and his written narrative in which he said he was detained for three days, Mr. XXXX replied that the police questioned and held him for 2-3 hours and then put him and other protestors in a big hall where they were held for three days.²⁴ I do not agree with counsel that the RPD erred in not finding this response satisfactory. Counsel argues that, in his explanation, Mr. XXXX made a key distinction between the time he was held for interrogation and the time he subsequently spent in detention. I do not agree. The RPD initially asked Mr. XXXX about the time he was "kept at the police station"/ "detained". The questions asked by the RPD were clear; Mr. XXXX answers were also clear and contradicted the time he said he was "detained" in his written narrative. Mr. XXXX said nothing about initially being held in a big hall until confronted with the inconsistency by the RPD. In addition, Mr. XXXX's explanation that the protestors

were kept in a big hall for three days after the questioning contradicts his initial testimony that the police "released" him after he was held for 2-3 hours.

- [42] I also reject counsel's argument that Mr. XXXX did not break down the amount of time he was held for questioning versus the amount of time he was detained in XXXX XXXX so there was nothing for his testimony to contradict. Mr. XXXX wrote in his written narrative that he was "detained for three days and questioned by police officers". While he did not specify what portion of the three days he was questioned, he did write that he was "detained" for three days. By contrast, he testified before the RPD that he was "detained" for 2-3 hours then released.
- [43] For all the above reasons, I agree with the RPD that his evidence contradicted his written narrative, that he failed to provide a satisfactory explanation for the contradiction and that this negatively affected his credibility.

Length of detention in XXXX XXXX XXXX XXXX XXXX

- [44] I do not agree with counsel that the RPD erred in finding that Mr. XXXX failed to provide a satisfactory explanation for an inconsistency in his evidence with regard to how long he was detained by police on XXXX XXXX XXXX XXXX.
- [45] As noted above, Mr. XXXX alleged that he was arrested by police XXXX XXXX XXXX and detained three days each time. At the hearing, he testified that he was arrested XXXX XXXX when protestors blocked a road and crossed into a territory for which they did not have a permit.²⁵ When the RPD member asked Mr. XXXX to tell her about the arrest, he said that the police beat him and warned him that his RC would not be renewed if he continued. When the RPD asked where the police beat him, he said "at the protest", that they charged at everyone with sticks. When the RPD asked Mr. XXXX how long he was kept at the police station, he replied 6-7 hours.²⁶ When the RPD asked what happened during that time, he said the protestors were held and interrogated, that they were asked their name, where they came from and why. Since Mr. XXXX had testified to being arrested XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX the RPD asked at which time he was beaten and detained for 7-8 hours, Mr. XXXX said it was during the arrest XXXX XXXX XXXX XXXX XXXX XXXX.²⁷ The RPD confirmed his response that it was during that arrest that he was detained for 7-8 hours to which he replied "yes".
- [46] It is clear from these answers that Mr. XXXX testified that he was detained/kept at the police station for somewhere between 6-8 hours XXXX XXXX XXXX XXXX XXXX. When the RPD asked him to explain the discrepancy between this testimony and his written narrative in which he said he was detained for three days both times he was arrested XXXX XXXX, Mr. XXXX replied that that the police interrogated and beat him for 6-7 hours and then put him and others in a big hall for 3 days.

- [47] I do not agree with counsel that the RPD erred in not finding this response satisfactory. As with the XXXX XXXX arrest, counsel argues that Mr. XXXX made a key credible distinction between the time he was held for interrogation and the time he subsequently spent in detention. I do not agree. As noted above, the RPD's questions to Mr. XXXX were clear and asked about the time he spent being detained by the police during each of the arrests XXXX XXXX. He replied that he was kept at the police station/detained for between 6-8 hours in either XXXX XXXX XXXX XXXX. He confirmed this last answer when asked about it by the RPD a second time to confirm that it was during the XXXX XXXX XXXX protest that he was detained for 7-8 hours.
- [48] I do not agree with counsel that that the RPD misrepresented Mr. XXXX evidence or asked confused questions by saying that he said in his written narrative that he was beaten and detained for three days. Mr. XXXX did allege in his written narrative that he was beaten by police and then detained for three days. Therefore, I do not agree with counsel that the RPD misrepresented what he wrote in his written narrative. In terms of one of the RPD's questions which asked on which occasion Mr. XXXX was "beaten and detained" for 7-8 hours, I also do not agree that this misrepresented Mr. XXXX testimony as he did testify that he was beaten and then detained for 6-7 hours in XXXX XXXX XXXX XXXX. I see no issue with these questions. Moreover, Mr. XXXX appeared to understand them and gave clear answers to them. His answer was that he was "detained" for 6-7 hours in XXXX XXXX XXXX XXXX and he said nothing about being questioned for 6-7 hours and then detained in a big hall for three days until the RPD noted the contradiction with his written narrative. I disagree with counsel that Mr. XXXX explanation was simply a clarification. His explanation contradicted his previous testimony which was clear that he had been "detained" for 6-7 hours.
- [49] For the reasons provided at paragraph 32-33 above, I also agree with the RPD that Mr. XXXX testimony about having his RC seized by police in XXXX was not credible on a balance of probabilities due to his ability to exit India.
- [50] I find that the above inconsistencies in Mr. XXXX evidence and the vagueness in his account of the seizure of his RC are sufficient to find his account of his arrests and mistreatment by the Indian police not credible on a balance of probabilities.
- [51] Finally, I do not agree with counsel that the objective country conditions corroborate Mr. XXXX past experiences of arrest. Even if the country conditions evidence does speak to restrictions on protests by Tibetans, especially on the occasion of visits by Chinese dignitaries, such restrictions are not uniform and have varied over time and across different regions in India. In my view, the available evidence does not establish that any restrictions on protests by Tibetans rises to the level of political persecution.

[52] For all these reasons, I find that the RPD did not err in finding that Mr. XXXX has not established that he would face a serious possibility of persecution in India or a likelihood of any of the types of serious harm that would make him a person in need of protection in relation to India.

CONCLUSION

[53] For the above reasons, I dismiss the appeal and confirm the decision of the RPD that the Appellant is neither a Convention refugee nor a person in need of protection.

(signed)

Jo-Anne Pickel

Me Jo-Anne Pickel

July, 29, 2020

Date

JP/tm

1 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145

2 Subsection 110(4) of the IRPA.

3 Canada (Citizenship and Immigration) v. Singh, 2016 FCA 96; Canada (Citizenship and Immigration) v. Raza FC 385

4 Section 110(6) of the IRPA.

5 Canada (Citizenship and Immigration) v. Williams, 2005 FCA 126.

6 Tretsetsang v. Canada (Citizenship and Immigration), 2016 FCA 175.

7 Ibid. at para. 72.

8 Ibid. at para. 73.

9 Namgyal v. Canada (Citizenship and Immigration), 2016 FCA 1060 at para. 36.

10 Tabs 3.4 and 3.8 of the National Documentation Package for India (March 31, 2020 and March 29, 2019).

11 Ibid. at para. 65.

12 See, for example, Pasang v. Canada (Citizenship and Immigration), 2019 FC 907.

13 See, Pasang, *ibid* at para. 58 and X (Re), 2019 CanLII 131099 (CA IRB).

14 Tab 3.13 of the National Documentation Package for India (July 17, 2020).

- 15 Audio-recording of hearing 46:30.
- 16 Tab 3.13 of the National Documentation Package for India (July 17, 2020).
- 17 Audio-recording of hearing 46:45.
- 18 Tab 14.5 of the National Documentation Package for India (March 29, 2019 and July 17, 2020).
- 19 Audio-recording of RPD hearing 19:00-25:00.
- 20 Tab 13.7 of the National Documentation Package for China (March 31, 2020) at p. 46.
- 21 Tab 13.1 of the National Documentation Package for India (July 17, 2020); Tab. 13.7 of the National Documentation Package for China (March 31, 2020).
- 22 Tab 3.17 of the National Documentation Package for India (March 29, 2019 and July 17, 2020).
- 23 Audio-recording of hearing 1:11:50.
- 24 Audio-recording of hearing 1:25:30.
- 25 Audio-recording of hearing 1:01:00- 1:02:40.
- 26 Audio-recording of hearing 1:06:00.
- 27 Audio-recording of hearing 1:09:45.
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RAD File / Dossier de la SAR : TB9-19683

RAD.25.02 (January, 2020)

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Immigration and Refugee

Board of Canada

Refugee Appeal Division

Commission de l'immigration

et du statut de réfugié du Canada

Section d'appel des réfugiés

RAD.25.02 (January, 2020)

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