

CANADA / JUDGMENT

TB8-14134

COURT

Refugee Appeal Division

DECIDED

18 January 2020

Research copy typeset by Esheria. Not court-issued or certified. A source URL was not supplied in the case record.

RAD File / Dossier de la SAR : TB8-14134 TB8-14135 / TB8-14136 Private Proceeding / Huis clos
Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXXXXXX XXXX XXXXXXXXXX XXXX Personnes en cause Appeal considered / heard at Toronto,
ON Appel instruit / entendu à Date of decision January 18, 2020 Date de la décision Panel L.
Krajcovic Tribunal Counsel for the persons who are the subject of the appeal Leonard H
Borenstein 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] XXXX XXXX (Principal Appellant), XXXX XXXX XXXX (Associate Appellant), XXXX XXXX
(Child Appellant) are citizens of China. They appeal a decision of the Refugee Protection
Division (RPD) rejecting their claims for refugee protection. The Appellants request that the
Refugee Appeal Division (RAD) allow the appeal and substitute a positive determination or,
in the alternative, refer the matter back to the RPD for redetermination.

DETERMINATION

[2] The RAD dismisses the appeal and confirms the decision of the RPD that the Appellants are
neither Convention refugees nor persons in need of protection, pursuant to section 111(1)(a)
of the Immigration and Refugee Protection Act (IRPA).

BACKGROUND

[3] The Appellants fear being arrested and jailed by Chinese authorities because they protested
inadequate compensation for land expropriation. The Appellants owned a XXXX XXXX
company for which they leased space in a government-owned building. In September 2015,
the Appellants received a notice from the local government to clear the property as the
building was being demolished for redevelopment. The Appellants were not satisfied with
the amount of compensation they were to receive. The Appellants and others affected by the
expropriation petitioned the local and district governments to increase the compensation.
On October 19, 2015 and October 20, 2015, the group protested. The second protest was
dispersed by the Public Security Bureau (PSB) and some protesters, including the
Appellants, were arrested. The Appellants escaped and went into hiding.

- [4] The PSB delivered a subpoena for the adult Appellants and the Child Appellant was expelled from school. On XXXX XXXX XXXX 2015, with the help of a smuggler, the Appellants fled China to the United States on previously obtained visas. They entered Canada on XXXX XXXX, 2015 and made inland claims for refugee protection on November 30, 2015.
- [5] The RPD rejected the claims on the basis of credibility. The Appellants submit that the RPD erred in its credibility assessment and by not referring to documents submitted by the Appellants.
- [6] The Appellants have not submitted new evidence and do not request an oral hearing. ROLE OF THE RAD
- [7] The RAD applies a standard of correctness for questions of fact, mixed fact and law. I may defer to the RPD in assessing findings involving the credibility of oral testimony if I find that it had a meaningful advantage in the circumstances.¹ In this case, I find that the RPD did not have a meaningful advantage.

ANALYSIS

The Subpoena The RAD finds that the subpoena (Chuanpiao) is likely fraudulent

- [8] The RPD found that the summons provided by the Appellants was inauthentic on the basis that it does not cite any section of the law that was violated. The RPD states "[i]t is reasonable to assume that an authentic summons issued by 'The People's Court of Xinhui District Jiangmen City' would have at least one section of the law cited therein, as it is an essential aspect of a summons and this summons was purportedly issued by a court of law."² Based on the failure of the document to cite any section of the law and the prevalence of fraudulent documents in China, particularly in Guangdong, the Appellants' home province, the RPD found that the summons was inauthentic.
- [9] The Appellants submit that the RPD erred in finding the summons inauthentic. The Appellants submit that the RPD does not cite any evidence to support the finding that the summons must contain a reference to the section of the law that was violated. The Appellants submit that this is a critical finding and must be made on the basis of the evidence before the RPD.
- [10] I agree with the Appellants' argument in part. I agree that the RPD erred by not citing any objective evidence to support its finding that the summons submitted must refer to the law that was violated. However, I have reviewed this document as part of my independent assessment and find that the RPD's conclusion that it is inauthentic is correct.

- [11] After my review of the documentary evidence, I find that the document submitted is a court-issued subpoena, rather than a summons, as referred to by the RPD Member and Appellants. The document states it is a Chuanpiao issued by The People's Court of Xinhui District Jiangmen City. As stated in the documentary evidence, "[s]ubpoenas (chuanpiao) are served by people's courts to require all parties to criminal proceedings to appear in court."³ I will refer to the document as a subpoena for the remainder of these reasons.
- [12] The documentary evidence states from January 1, 2013, failure to comply with a witness subpoena will result in the issuance of a compelled appearance notice.⁴ At the hearing, the Principal Appellant indicated that the PSB continued to look for them and had been to their home in February 2018, two months before the hearing. In their testimony, the Appellants did not indicate that a compelled appearance notice was issued and there is no evidence on the record regarding the issuance of a such a notice. Given that the Appellants failed to appear on October 22, 2015 as requested, and their testimony that the PSB continued to look for them, it is reasonable to expect that a compelled appearance notice would have been issued. As a result, I draw a negative inference with respect to the subpoena provided.
- [13] The documentary evidence states that there has been no variation in the format of summons and subpoenas since 2003.⁵ It also states that these forms are supposed to be used throughout China and that regional variances are not meant to exist.⁶ The National Documentation Package (NDP) contains samples of summons and subpoenas.⁷ I have compared the subpoena submitted by the Appellants to the sample subpoena contained in the NDP⁸ and find that they are inconsistent in content, structure and format.
- [14] The sample subpoena contains an identifying number on the right above the text box, which is missing from the subpoena provided by the Appellants. In addition, the format and structure of the subpoena submitted by the Appellants is inconsistent with the sample. In the subpoena provided by the Appellants, the information regarding the judge and clerk are positioned on the right, whereas in the sample subpoena, it is centered. The instructions at the bottom of the subpoena provided are inconsistent in structure and spacing when compared with the sample. I also note that the subpoena provided by the Appellants indicates the name of the officer, however, fails to indicate the name of the judge. I find the absence of a judge concerning, as the subpoena is a court-issued document.
- [15] I note that at the hearing, the RPD Member did not question the Appellant regarding the inconsistencies in the subpoena. However, the RPD is not required to confront a claimant with contradictions between the Appellant's documents and the material provided in the NDP.⁹
- [16] Foreign documents are presumed to be authentic, however, in light of the inconsistencies between the sample subpoena and the subpoena provided by the Appellants, I find this presumption has been rebutted. I further note the prevalence of fraudulent documents in China, particularly in Guangdong province,¹⁰ the Appellants' home province. As a result of the lack of a compelled appearance notice, inconsistencies between the subpoena provided

by the Appellants and the sample subpoena contained in the NDP and the prevalence of fraudulent documents in China, I find on a balance of probabilities that the subpoena is fraudulent.

- [17] Submitting a fraudulent document may affect one's overall credibility.¹¹ I draw a negative inference with respect to the Appellants' credibility as a result of the provision of a fraudulent subpoena. I find on a balance of probabilities that the Appellants are not wanted by the PSB or authorities in China for their alleged political opinion and protest activities. I find that this also explains why the Appellants were able to exit China without difficulty. The United States visa application
- [18] The RPD found that the Associate Appellant falsified information on his application for a United States visa, which was made prior to the Appellants' purported involvement with Chinese authorities. As a result, the RPD drew a negative inference with respect to the Appellants' credibility.
- [19] The Appellants submit that the RPD erred in drawing a negative credibility inference because the United States visa application was not in evidence before the RPD. The Appellants submit that the RPD relied on the confusion of the Associate Appellant who vacillated in his evidence regarding a 3-year-old visa application to impugn the Appellants' credibility. The Appellants further submit that the RPD erred in drawing a negative credibility inference against all of the Appellants as a result of the alleged misrepresentation of the Associate Appellant, as each Appellant's case is to be decided on its own merits. The RAD finds that the United States visa application was before the RPD
- [20] I find the Appellants' argument that the RPD erred in drawing a negative credibility inference because the United States visa application was not in evidence before the RPD is without merit. The Biometrics Report which includes the information contained in the Associate Appellant's visa application was in evidence before the RPD. The Consolidated List of Documents indicates that the Biometrics Report was Exhibit 6.¹² In my review of the audio recording, I note that Appellants' counsel asked the RPD Member for a copy of the Biometrics Report at the break, which the Member provided to him.¹³ As a result of the foregoing, I find that the Biometrics Report, which contained the contents of the United States visa application, was in evidence before the RPD. The RAD finds that the RPD did not err in drawing a negative credibility inference from the evidence regarding the Associate Appellant's education and work title
- [21] I find the Appellants' argument that the RPD Member relied on the confusion of the Associate Appellant regarding a 3-year-old visa application to impugn the Appellants' credibility is without merit. I have reviewed the record and audio recording of the hearing. The RPD found that the Associate Appellant was untruthful regarding his education. At the hearing, the Associate Appellant initially testified that he had seven years of education, that he had completed junior high and had not attended university.¹⁴ The RPD Member asked the Associate Appellant if he had attended XXXX XXXX XXXX to which he responded that he

had, but that he could not remember when he attended, then stated it was approximately 2006. The RPD Member noted that the visa application states he attended XXXX XXXX XXXX in 1979, to which the Associate Appellant responded that was correct and that he had made a mistake. The RPD Member asked the Associate Appellant if he had ever attended XXXX XXXX and XXXX XXXX to which he responded that he had not. When asked why his visa application states he attended there, the Associate Appellant stated he wanted to register to attend but then did not have time. The RPD found the Associate Appellant's explanations were incoherent.

- [22] The RPD also found that the Associate Appellant embellished his work title. The Associate Appellant's United States visa application states that he is the chairman and legal representative of the business. At the hearing, the Appellant testified that he was a XXXX of the business.¹⁵ When the RPD Member put these inconsistencies to him, the Associate Appellant stated "I'm the boss, so I think that was the correct information."¹⁶
- [23] I agree with the RPD that the Associate Appellant was untruthful about his education and embellished his work title. I find that the Associate Appellant's confusion and the visa application having been made three years prior, fails to explain the inconsistencies in his evidence. It fails to explain the inconsistency regarding whether he had attended university. The Associate Appellant indicated on his visa application that he attended XXXX XXXX XXXX XXXX XXXX and testified that the information on his United States visa application was true. However, he also testified that he did not attend JiXXXX XXXX XXXX XXXX XXXX. I find his explanation that he wanted to register to attend but then did not have time, does not reasonably explain the inconsistency in his evidence.
- [24] The confusion of the Associate Appellant and timing of the visa application also fails to explain the inconsistency in the Appellants' evidence regarding whether he attended college. The Associate Appellant's Schedule A Form states he has seven years of education and completed middle school,¹⁷ whereas his visa application states he attended college and university¹⁸ and in testimony, he stated he attended college but not university. There are also inconsistencies within the Associate Appellant's testimony, as he initially stated he had seven years of education and only completed junior high; then later when the RPD Member specifically asked him whether he had attended XXXX XXXX XXXX, he stated that he had. The Associate Appellant was unable to provide the approximate decade during which he attended XXXX XXXX XXXX. The information in his visa application differed from his testimony by over 25 years.
- [25] I agree with the RPD that the Associate Appellant embellished his work title in his visa application. I acknowledge the Appellant's explanation that he was the "boss," however, I find that this explanation fails to explain the difference in positions of manager and that of chairman and legal representative. One would expect the Associate Appellant to be consistent in his evidence regarding the position that he held.

- [26] As a result of the foregoing, I agree with the RPD's finding that the Associate Appellant was untruthful about his education and embellished his work title. I also find that his explanations did not reasonably explain the inconsistencies in the evidence. I agree with the following comments of the RPD: "although these misrepresentations are of relatively benign details, I am troubled at the Family's willingness to provide false information on official applications. I draw a negative inference against the Family's credibility on the basis that Mr. XXXX falsified, or was at least complicit in the falsification of personal information to a foreign government for immigration purposes. I note that he had no reason to falsify information as he was not under duress at the time of the application."¹⁹ I agree with the RPD and draw a negative credibility inference.
- [27] I also note that the Associate Appellant failed to correct the Record. The Federal Court has stated that, where refugee claimants lie to obtain a visa they "ought to immediately correct the record and most certainly not later than when the refugee claim is made."²⁰ The facts of the cases differ in that, in the current case, the Appellants applied for the visa prior to their purported issues with authorities, whereas in the Wang case, the claimant was in fear at the time he applied for the visa. However, I find the principle still applies, that the Appellants should have corrected the record as soon as possible. I draw a negative credibility inference resulting from the Appellants' failure to correct the record. The RAD finds that the RPD did not err in drawing a negative credibility inference against all of the Appellants
- [28] I find the Appellants' argument that the RPD erred in drawing a negative credibility inference against all of the Appellants as a result of the alleged misrepresentation of the Associate Appellant is without merit. The jurisprudence states, where a claim has been joined to another claim, a finding of lack of credibility in respect of one claimant's evidence and testimony could have a negative impact on another claimant where the claims are linked to the same event or one is dependent on the other.²¹ The RPD Member refers to this principle at the beginning of the hearing when he states that the claims are joined and that, although each would be considered on its own merit, the testimony that each claimant gives can have an effect on the others.²² The Associate Appellants did not advance any claim separate or distinct from that of the Principal Appellant. Rather, the claims of the Associate Appellants are based on the same events and fully dependent upon the claim of the Principal Appellant. Therefore, I draw a negative credibility inference against the Appellants as a result of the falsified information contained in the Associate Appellant's United States visa application. The Other Documents The RAD finds that the RPD did not err by not referring to the documents raised by the Appellants
- [29] The Appellants submit that the RPD did not consider the documentary evidence submitted as the reasons do not contain any analysis of the Business Licenses, Tax Registration Certificate, Lease Agreement, Land Expropriation Notice, Appraisal Report and the Petition. The Appellants submit that these documents were ignored by the RPD.

- [30] I find the Appellants' argument is without merit. The RPD does not need to refer to every piece of evidence in its reasons. The RPD is presumed to have taken all of the evidence into consideration whether or not it indicates having done so in its reasons, unless the contrary is shown.²³ The mere fact that the tribunal fails to refer to all of the evidence when rendering its decision does not necessarily signify that it ignored evidence, if a review of the reasons suggests that the tribunal did consider the totality of the evidence.²⁴ Generally speaking, it is only necessary to refer explicitly to evidence that is directly relevant to the issue being addressed, and that which otherwise may appear to be in conflict with the conclusion reached.²⁵ It is not a reviewable error to fail to deal with documents that are only marginally relevant.²⁶
- [31] I find the documents that the Appellants state the RPD did not consider were not directly relevant to the determinative issue of whether the Appellants face a serious possibility of persecution in China. The Business Licenses, Tax Registration Certificate, Lease Agreement, Land Expropriation Notice, Appraisal Report and Petition speak to the existence of a business, expropriation of land and petitioning. These documents indicate that the Appellants had a business, leased land from the government, received notice that the land was being expropriated for development and petitioned the government. However, these documents fail to address the determinative issues of whether the Appellants are wanted by Chinese authorities or that they protested and have a political profile. They have little weight, as they are not probative of whether the Appellants are wanted by authorities or have a political profile of interest to authorities as alleged. As a result of the foregoing, I find that it was not necessary for the RPD to refer to these documents in its reasons. The RAD finds that the RPD erred in not addressing the school letter in its reasons
- [32] Although not specifically raised by the Appellants, I find that the RPD erred by not addressing the school letter as it speaks to the determinative issue of whether the Appellants are wanted by Chinese authorities. I have considered the school letter as part of my independent assessment. The letter states that the Child Appellant was expelled from school because the PSB notified the school that the Appellants were involved in leading anti-government activities.
- [33] The jurisprudence states that submitting a fraudulent document may affect the weight assigned to other documents submitted by the Appellants, particularly where the documents are interrelated.²⁷ I find that the subpoena and school letter are interrelated. The Appellants claim that they were arrested by the PSB and that the PSB has been to their home looking for them and left the subpoena. The school letter states that the Child Appellant was expelled based on information that the PSB provided to the school. As a result of my finding that the subpoena and school letter are interrelated, I find that the fraudulent subpoena negatively affects the weight that I assign to the school letter. I also note that the name and address of the school indicated on the letter²⁸ are inconsistent with the schools indicated on the Child Appellant's visa applications.²⁹ As a result of the foregoing, I assign little weight to the school letter to support the Appellants' allegations that they are wanted

by the PSB. Uncontested credibility findings

- [34] The RPD found that the Principal Appellant's testimony was evasive regarding their passage through airport security, noting that it had to repeat questions numerous times and that the Principal Appellant appeared perplexed and forgetful, despite the rest of her testimony being much more lucid. The Appellants have not challenged this finding on appeal.
- [35] I have reviewed the audio recording of the hearing and agree with the RPD that the Principal Appellant was evasive regarding their passage through airport security. I specifically note that the RPD Member asked the Principal Appellant regarding the instructions the smuggler gave the Appellants about going through security numerous times and the Principal Appellant repeatedly failed to directly answer the question.³⁰ I also note that the RPD Member asked the Associate Appellant regarding the instructions the smuggler gave the Appellants and he also failed to directly answer the question.³¹
- [36] I also note that there is little evidence in the record regarding how the smuggler assisted the Appellants in exiting China. When the RPD Member asked the Principal Appellant what services were provided by the smuggler, she stated that he "...accompanied them to come out."³² The Appellants' Basis of Claim (BOC) narratives state that "...with the help of the smuggler my husband and our son and I fled China."³³ In response to question 7 of the Schedule 12 form, which asks about the person who facilitated the journey to Canada and the type of assistance provided, the Appellants state that the smuggler helped them leave China safely, booked their flights and brought them to Canada.³⁴
- [37] I find that the Principal Appellant's evasive testimony regarding their passage through airport security and the few details in the record regarding how the smuggler assisted them undermines their allegations that they were assisted by a smuggler in leaving China. I find that the Appellants have not established on a balance of probabilities that they were assisted by a smuggler in leaving China. In any case, having found that the Appellants are not wanted by the Chinese authorities above explains why the Appellants were able to exit the airport in China using their own genuine passports without any difficulty. The RAD finds that the Appellants are not wanted in China
- [38] Sworn testimony is presumed to be true unless there is valid reason to doubt it.³⁵ I find that the presumption of truth has been rebutted in this case.
- [39] I draw a negative inference with respect to the Appellants' allegations that they are wanted by Chinese authorities as a result of the provision of a fraudulent subpoena. I draw a further negative inference from the Associate Appellant providing false information on his United States visa application prior to any problems with authorities, his testimony regarding this issue and his failure to correct the record.

- [40] In addition, as a result of the evasive testimony of the Principal Appellant regarding their passage through airport security and the little detail on record regarding the smuggler and the services provided, I find that the Appellants failed to establish on a balance of probabilities that they used a smuggler to exit China.
- [41] I find that these concerns rebut the presumption of truthfulness.
- [42] As I have found the subpoena to be fraudulent, the only remaining documentation corroborating the Appellants' allegations that they are wanted by authorities in China is the school letter, to which I assign little weight. I find that the school letter fails to overcome the evidence indicating that the Appellants are not wanted in China. As a result of the foregoing, I find, on a balance of probabilities, that the Appellants were able to leave China on their own genuine passports without issue because they were not wanted by Chinese authorities. As a result, I find that it is not necessary to address the Appellants' argument regarding exit from China.
- [43] I find that the Appellants have not established on a balance of probabilities their allegations that they are wanted by the Chinese authorities or that they possess a political opinion opposing the Chinese government in a land expropriation dispute.

CONCLUSION

- [44] The RAD dismisses the appeal and confirms the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection, pursuant to section 111(1)(a) of the Immigration and Refugee Protection Act (IRPA). (signed) "L. Krajcovic" L. Krajcovic January 18, 2020 Date 1 M.C.I. v. Huruglica, Bujar (F.C.A., no. A-470-14), Gauthier, Webb, Near, March 29, 2016, 2016 FCA 93, paras. 70 and 103. 2 Exhibit RPD-1, RPD Record, RPD Reasons, p. 6, para. 15. 3 Exhibit RPD-1, RPD Record, Exhibit 5, National Documentation Package (NDP) for China (31 October 2017), item 9.11, at p. 3. 4 Ibid, at p. 4. 5 Ibid, at p. 1. 6 Ibid, at p. 1. 7 Ibid, at pp. 5-8. 8 Ibid, at p. 5. 9 Osei, Gyane Nana v. M.E.I. (F.C.T.D., no. T-2992-92), Reed, November 17, 1993. 10 Exhibit RPD-1, RPD Record, Exhibit 5, National Documentation Package (NDP) for China (31 October 2017), item 3.22. 11 Gochez, Julio Cesar v. M.C.I. (F.C.T.D., no. IMM-3545-99), Dubé, September 7, 2000. 12 Exhibit RPD-1, RPD Record, Exhibit 4, at p. 47. 13 RPD Hearing Recording, April 23, 2018, at 00:46:14 to 00:48:02. 14 Ibid, at 00:27:08. 15 Ibid, at 00:27:50 to 00:29:00. 16 Ibid, at 00:29:35. 17 Exhibit RPD-1, RPD Record, Exhibit 1, at p. 90. 18 Ibid, at pp. 116 and 123. 19 Exhibit RPD-1, RPD Record, RPD Reasons, at p. 6, para. 14. 20 Wang, Yong v. M.C.I. (F.C., no. IMM-5464-15), Zinn, August 26, 2016, 2016 FC 972, at paras. 10-11. 21 Ramnauth v. Canada (Minister of Citizenship and Immigration), 2004 FC 233, [2004] F.C.J. No. 305 (QL) at para. 9; Tofan, Ioan v. M.C.I. (F.C.T.D., no. IMM-3167-00), Nadon, September 11, 2001, 2001 FCT 1011. 22 RPD Hearing Recording, April 23, 2018, at 00:04:11. 23 Florea, Constantin v. M.E.I. (F.C.A., no. A-1307-91), Hugessen, Desjardins, Décary, June 11, 1993; Kisungu, Guyguy Tshika v. M.C.I. (F.C.T.D., no. IMM-3807-00), Nadon, May 8, 2001, 2001 FCT 446. 24 Hassan, Jamila Mahdi v. M.E.I. (F.C.A., no. A-831-90), Isaac, Heald, Mahoney, October 22, 1992, Hassan v. Canada (Minister of

Employment and Immigration) (1992), 147 N.R. 317 (F.C.A.). 25 Bains v. Canada (Minister of Employment and Immigration) (1993), 63 F.T.R. 312 (F.C.T.D.). 26 Cepeda-Guiterrez, Carlos v. M.C.I (F.C.T.D., no. IMM-596-98), Evans, October 16, 1998. 27 Uddin, Nizam v. M.C.I. (F.C.T.D., no. IMM-895-01), Gibson, April 26, 2002, 2002 FCT 451. 28 Exhibit RPD-1, RPD Record, Exhibit 7, at p. 179. 29 Exhibit RPD-1, RPD Record, Exhibit 6, at pp. 101 and 107. 30 RPD Hearing Recording, April 23, 2018, at 00:20:56 - 00:23:11. 31 Ibid, at 00:44:37 to 00:46:00. 32 Ibid, at 00:18:12. 33 Exhibit RPD-1, RPD Record, Exhibit 2, at p. 22; Exhibit RPD-1, RPD Record, Exhibit 3, at p. 36. 34 Exhibit RPD-1, RPD Record, Exhibit 1, at p. 86. 35 Maldonado v. Canada (Minister of Citizenship and Immigration), [1980] 2 F.C. 302 (C.A.)

RAD File / Dossier de la SAR : TB8-14134 TB8-14135 / TB8-14136 RAD.25.02 (April 04, 2019)
Disponible en français 11 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 (April 04, 2019) Disponible en français

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

CASE PAGE <https://chat.esheria.ai/case-law/canada/credibilityassessment-refugee-appeal-division-2020--6a40c3b04cf2c72690fb1744>

A source URL was not supplied in the case record. Consult the court's original record before reliance.

Prepared on 29 October 2026 · Esheria