

CANADA / JUDGMENT

TB8-10313

COURT

Refugee Appeal Division

DECIDED

18 January 2020

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RAD File / Dossier de la SAR : TB8-10313 TB8-10314 / TB8-10315 Private Proceeding / Huis clos
Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXXXXXXXX XXXX XXXXXXXXXXXX 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 Linda
Krajcovic Tribunal Counsel for the persons who are the subject of the appeal Nkunda I
Kabateraine Conseil des personnes en cause Designated representative XXXX XXXX
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) and XXXX XXXX
(Minor 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 allows the appeal and refers the matter back to the RPD for redetermination by a
differently constituted panel, pursuant to subsection 111(1)(c) of the Immigration and
Refugee Protection Act (the IRPA).

BACKGROUND

[3] The Appellants' allegations are as follows. The Appellants claim that upon return to China,
they will be arrested and jailed by authorities because they criticized the government on
social media. The Appellants are farmers who opened a convenience store to supplement
the little income generated by their XXXX. The Party Secretary of the Village Committee
repeatedly refused to pay for goods at their store, leaving "I Owe You" (IOU) notes instead.
The Principal Appellant approached the Village Committee for payment and the officials
said he had already been paid and took the IOU notes from him. The Principal and Associate
Appellants made posts on WeChat regarding government corruption. The Public Security
Bureau (PSB) attended the Appellants' home demanding that they retract the WeChat posts
and apologize within three days. The Appellants refused to do so. On the third day, the PSB
called their home and the Appellants went into hiding. On XXXX XXXX, 2017, they fled to the

United States. The Appellants arrived in Canada on XXXX XXXX XXXX 2017 and made inland claims for refugee protection.

- [4] The RPD rejected the claims on the basis of credibility. The Appellants submit that the RPD erred in its assessment of credibility and documents submitted by the Appellants.
- [5] The Appellants have not submitted new evidence and do not request an oral hearing. ROLE OF THE RAD
- [6] The RAD applies a standard of correctness for questions of fact, mixed fact and law, 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 RPD erred in assessing the business license

- [7] The RPD Member found that the business license provided by the Appellants was printed on ordinary paper and had no security features or hallmarks to indicate that it was a genuine document issued by a government authority, noting that it can easily be made by anyone. The RPD also noted that the agent provided the Appellants with fraudulent documents in order to obtain the United States visas, demonstrating that they have access to fraudulent documents. The RPD Member cites the documentary evidence indicating the availability of fraudulent documents in China, particularly in Guangdong, where the Appellants reside.
- [8] The Appellants submit that the business license was issued by the Heting Village Committee of Renhe Township and bore an official stamp. The Appellants submit that the business license provided no indication of fraud on its face and that the RPD did not make a finding that it was fraudulent. The Appellants submit that, while the RPD asserted that the business license had no security features, the Federal Court has recognized official stamps, such as the one on the license, as security features. The Appellants submit that a finding that fraudulent documents are readily available in China is not a ground for rejecting a claimant's documents.
- [9] I accept the Appellants' arguments and find that the RPD erred. I find that the RPD erred in finding that the business license contains no security features indicating it was a genuine document issued by a government authority. The business license contains a stamp of the Heting Villagers' Committee of Renhe Township of Baiyun District of Guangzhou City. As stated by the Appellants, the Federal Court has recognized official stamps as security features. I further agree that a finding that fraudulent documents are readily available is not, in and of itself, a ground for rejecting a claimant's documents.

- [10] The RPD found that the Appellants failed to establish their claim on the basis of credible and trustworthy evidence. After my review of the entire record, and in light of my finding with regard to the business license, I find the remaining RPD findings insufficient to maintain the determination that the Appellants were not credible on a balance of probabilities.
- [11] The Appellants have made a number of other submissions, however, I find it unnecessary to comment on these in light of my findings above.

CONCLUSION

- [12] After conducting my own analysis of the entire record, and in light of my finding that the RPD erred in its assessment of the business license, I find the remaining findings insufficient to maintain the determination that the Appellants are not Convention refugees or persons in need of protection.
- [13] However, I am not in a position to substitute a positive determination. After my review of the record, credibility issues remain outstanding on evidence presented to the RPD, some of which were not put to the Appellants at the hearing, and I am unable to do so in this proceeding. Further, as there is no new evidence, I cannot hold an oral hearing.
- [14] As I am unable to confirm the RPD decision or set it aside and substitute my own decision without hearing evidence that was presented to the RPD, I refer the matter to the RPD for re-determination pursuant to section 111(2)(b) of the IRPA.

DISPOSITION

- [15] The RAD allows the appeal and refers the matter to the RPD for redetermination by a differently constituted panel pursuant to section 111(1)(c) of the IRPA. (signed) "Linda Krajcovic" Linda Krajcovic January 18, 2020 Date 1 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93 (CanLII), [2016] 4 FCR 157, paras 70 and 103.

RAD File / Dossier de la SAR : TB8-10313 TB8-10314 / TB8-10315 RAD.25.02 (April 04, 2019)
Disponible en français 2 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

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