

CANADA / JUDGMENT

Dao v. Canada (Citizenship and Immigration)

2024 FC 1898

COURT

Federal Court

DECIDED

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Dao v. Canada (Citizenship and Immigration) Court (s) Database Federal Court Decisions Date 2024-11-26 Neutral citation 2024 FC 1898 File numbers IMM-5016-22 Decision Content Date: 20241126 Docket: IMM-5016-22 Citation: 2024 FC 1898 Toronto, Ontario, November 26, 2024 PRESENT: The Honourable Mr. Justice A. Grant BETWEEN: ANH HOANG DAO Applicant and THE MINISTER OF CITIZENSHIP AND IMMIGRATION Respondent JUDGMENT AND REASONS I.

OVERVIEW [1] Mr. Anh Hoang Dao seeks refugee protection in Canada. The Immigration and Refugee Board – at both its first instance and appeal divisions – found that Mr. Dao had failed to credibly establish that he has a well-founded fear of persecution, and rejected his claim. He now seeks judicial review of the appeal decision.

[2] For the reasons that follow, I will dismiss this application for judicial review. The decision under review contains no fatal flaws in its overarching logic, and as such, it is reasonable. II.

BACKGROUND A. Facts [3] Mr. Dao is a citizen of Vietnam. He alleges a well-founded fear of persecution from the Vietnamese Communist Party [VCP] due to his political opinion and, more specifically, because of his activism related to a spill of toxic chemicals into the South China Sea in 2016 by the Formosa Steel Corporation.

[4] This incident caused massive fish deaths in four coastal provinces in central Vietnam, wreaking havoc on the local fishing economy, the local food sources, and the livelihoods of the local community, including the Applicant's family: his father is a fisherman, and his mother sells fish in the local market.

[5] As a result of the spill, protests erupted in September 2016, with protestors demanding an end to Formosa's pollution and compensation for those affected. The Applicant participated in those protests, which resulted in a small monetary payout as compensation from Formosa. However, people remained dissatisfied and protests continued, demanding further compensation and greater environmental protection from the VCP.

[6] In February 2017, Mr. Dao joined a group of local activists fighting for greater environmental protection, and seeking to expose the VCP's corruption and complicity with companies like Formosa. As part of his duties, he helped prepare flyers that other group members

distributed throughout his hometown. The flyers had anti-government messages and encouraged others to join the protests. Some of the group members who distributed the flyers were arrested, detained, and interrogated. They were threatened with arrest if they continued to protest.

- [7] According to the Applicant, those arrested were also questioned about who designed the flyers, and they disclosed the Applicant's identity to the police. Those group members informed the Applicant that they had given the police his name and that the police were looking for him. The Applicant immediately fled to a village near the border with Laos.
- [8] While he was in hiding, the police visited the Applicant's family home numerous times and demanded that his parents inform them upon his return. As a result, the Applicant fled Vietnam for Japan in June 2018. However, he could not stay there and returned briefly to Vietnam, before entering Canada on a study permit in November 2018.
- [9] He initiated his claim for refugee protection almost two years later, in August 2020.
- [10] The Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] refused the Applicant's claim. The determinative issues were credibility and the lack of a well-founded fear of persecution. The RPD found that the Applicant likely had not designed the protest flyers in question, that he had not participated in the 2017 protests, that he is likely not wanted by the police, and has not been politically active against the VCP while in Canada. It also found that his fear of persecution was not well-founded, as the documentary evidence indicated the authorities were not targeting low-profile activists such as the Applicant.
- [11] The Applicant appealed this decision to the IRB's Refugee Appeal Division [RAD]. B. The Decision Under Review [12] The RAD refused the Applicant's appeal, and confirmed the RPD's decision that he is not a Convention refugee. As at the RPD, the determinative issue for the RAD was credibility, as it related to a lack of a well-founded fear of persecution.
- [13] The RAD agreed with the RPD's finding that, based on the inconsistent evidence in his Basis of Claim form [BOC] and testimony, the Applicant had, on a balance of probabilities, attended just one protest in September 2016. It found his participation in this one protest did not attract the attention of the authorities.
- [14] The RAD also agreed with the RPD's finding that the Applicant is not wanted by the authorities in Vietnam. In coming to that conclusion, it noted that there was no evidence that the Applicant was charged with any offence or that there is any warrant for his arrest. The RAD further observed that the police have not returned to the Applicant's home in over five years, and that he was issued and travelled on a Vietnamese passport with no difficulty in May 2018. On this point, the RAD referred to evidence documenting the authorities' use of passport and other controls to limit the freedom of movement of activists.

- [15] The RAD disagreed with the RPD's finding that the Applicant had not designed the flyer in question, and found that he did in fact design the flyer the activists were distributing when they were arrested. However, the RAD agreed with the RPD's ultimate determination that the Applicant lacks the profile that would place him at risk, as the country conditions evidence indicates that not all anti-government protestors have a well-founded fear of persecution.
- [16] The RAD summarized its findings as follows: the Appellant attended one protest, as did thousands of other Vietnamese people, and there is no evidence that he is wanted by the police. The objective evidence states that protests related to Formosa are no longer occurring and that environmental protesters face a moderate risk of official discrimination. The objective evidence also indicates that while some protestors may have been arrested and detained for being involved in the protests, the treatment that they suffered is not sufficient to amount to persecution. As the Appellant submits in his memorandum, the objective evidence states that it is some high-profile activists involved in raising awareness and organizing demonstrations that have been subject to ill treatment. The Appellant argues that he is at risk because he is an activist who has come to the attention of the authorities. I do not agree. The authorities have shown no interest in the Appellant for over five years, he has been able to approach them to secure a passport, and he has entered and exited the country with no difficulty.
- [17] In making these findings, the RAD considered the Applicant's documentary evidence and found that much of it did not apply to his circumstances. It also considered a letter of support from the Applicant's father, but assigned it little weight as it did not establish that the Applicant is currently wanted by the police or has a profile that would attract the attention of the authorities. III. ISSUES AND STANDARD OF REVIEW [18] The Applicant raises the following issues on judicial review: a)The RAD erred in finding that the Applicant does not have a well-founded and forward-facing risk of persecution in Vietnam; b)The RAD erred in finding that the Applicant does not face a risk of persecution due to his ability to leave Vietnam on a Vietnamese passport; and c)The RAD erred in its assessment of the Applicant's supporting evidence.
- [19] Each of these arguments goes to the substance of the RAD decision and, as such, they attract review on the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [Vavilov]. In conducting a reasonableness review, a court "must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified" (Vavilov at para 15). It is a deferential standard, but remains a robust form of review and is not a "rubber-stamping" process or a means of sheltering administrative decision-makers from accountability (Vavilov at para 13). IV. ANALYSIS [20] At the outset of my analysis, I note that the hearing into this application for judicial review was scheduled to be heard on November 7, 2024. In the normal course, the Court's registry communicated this hearing date to the parties, and again reached out to counsel in the week of the hearing. No response was received from counsel for the Applicant. Moreover, counsel for the

Applicant did not appear at the judicial review hearing, despite further calls from the Registry that morning. As such, the hearing was commenced and counsel for the Respondent indicated that she would be relying on her written submissions only.

- [21] As a result, my analysis below is based solely on the written representations that have been provided by each party. A. The RAD's findings on the Applicants forward-looking risk were reasonable [22] In assessing the RAD's reasons globally and in context, I find that it reasonably concluded that the Applicant does not have a well-founded fear of persecution in Vietnam. It provided a justified rationale for concluding that, even though the Applicant had taken part in a demonstration and prepared a flyer in relation to the protests, these facts on their own were not sufficient to establish a forward-looking risk of persecution. The RAD reasonably observed that there was no evidence in the record that the Applicant had been charged with any offence or that there was any warrant for his arrest. It was also reasonable for the RAD to note that the police last attended at the Applicant's home over five years ago and have not returned since.
- [23] I also note that there was an evidentiary basis for the RAD's conclusions that: i) thousands of individuals participated in the Formosa protests, and it was only the high-profile activists who faced mistreatment; ii) other, lower-level participants in the protests, which are no longer occurring, do not necessarily have a well-founded fear of persecution; and iii) the Applicant lacks the profile associated with those who may have a forward-looking risk of mistreatment.
- [24] While the Applicant argues that he did, in fact, have the kind of profile that could attract mistreatment, I find that this argument really amounts to a disagreement with the RAD's weighing of the evidence. In other words, I do not find that this argument reveals an overarching error in the logic of the RAD's conclusions, or that it failed to consider evidence that ran contrary to its conclusions. Indeed, the RAD specifically acknowledged that some Formosa activists have been subject to ill-treatment. It simply found that, at this time, the Applicant lacked the profile of someone who, on a forward-looking basis, was likely to face such treatment were he to return to Vietnam. I do not view this conclusion as being unreasonable. B. The Applicant's ability to leave Vietnam [25] The RPD found that the Applicant's ability to obtain a Vietnamese passport, to travel back and forth to Japan, and to once again leave Vietnam for Canada, were indicators that he was not of serious concern to the police. The RAD found that the RPD had not erred in these findings. In arriving at this conclusion, the RAD referred to objective documentary evidence that the Vietnamese state restricts the freedom of movement of at least some activists by various means, including passport confiscation upon return from overseas trips, rejecting or not responding to passport renewals, and preventing activists from boarding flights. The Applicant does not dispute this evidence, but argues that the RAD erred in failing to acknowledge evidence that suggests the VCP also, at times, forces prisoners of conscience into exile and does not permit them to return to Vietnam. I disagree that the RAD erred in this regard, for the simple reason that the Applicant has never been a prisoner of conscience. In the

circumstances, I do not see how the RAD was required to extrapolate from this evidence, and speculate that forced exile may also apply to lower-level political protesters, who are not prisoners of conscience, and who managed to exit, return, and exit again from Vietnam with no apparent difficulty.

- [26] I acknowledge the possibility that some protesters may very well be of interest to the state, while not being subject to strict controls on movement. That said, based on the record before me, I cannot conclude that it was either irrelevant or illogical for the RAD to rely on the Applicant's unfettered freedom of movement as one factor in determining that he did not have a significant profile of concern to the Vietnamese authorities. C. The RAD's assessment of the supporting evidence [27] The Applicant argues the RAD erred in its consideration of a letter from his father corroborating that: a) his family was economically affected by the Formosa disaster; b) he was involved in designing a flyer for distribution; and c) the police visited his home three times after the members of his group were arrested. Once again, I disagree.
- [28] The RAD did not ignore this letter. Rather, it gave little weight to the letter because it did not establish that the Applicant is currently wanted by the police or has a political profile that will attract the likelihood of persecution. Fundamentally, the Applicant argues that the RAD erred in its interpretation and weighing of this evidence. It is trite that the role of this Court is not to reweigh evidence duly considered in the decision under review. Moreover, it was not an error for the RAD to observe that the letter does not establish a forward-looking risk of persecution by the Vietnamese authorities. Taken at its highest, the letter establishes the economic impact of the Formosa spill, the Applicant's participation in protests, and that the police looked for him roughly five years prior to the RAD proceedings. In the circumstances, I do not believe that the RAD was required to infer from this evidence a forward-looking risk of persecution. Once again, I can discern a rational chain of analysis leading from the RAD's reasons to its outcome and, as such, it was reasonable for the tribunal to reject the Applicant's appeal. V. CONCLUSION [29] For the reasons set out above, I will dismiss this application for judicial review. The RAD's determination was intelligible, transparent, and justified; in sum, I see no errors warranting the intervention of this Court. JUDGMENT in IMM-5016-22 THIS COURT'S JUDGMENT is that: The application for judicial review is dismissed. No question is certified for appeal. "Angus G. Grant" Judge FEDERAL COURT SOLICITORS OF RECORD DOCKET: IMM-5016-22 STYLE OF CAUSE: ANH HOANG DAO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION PLACE OF HEARING: Toronto, Ontario DATE OF HEARING: November 7, 2024 JUDGMENT AND REASONS: GRANT J. DATED: November 26, 2024 APPEARANCES: Jocelyn Espejo-Clarke For The Respondent SOLICITORS OF RECORD: Attorney General of Canada Toronto, Ontario For The Respondent

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