Federal Court  Cour fédérale

Date: 20150219

Docket: IMM-8158-13

Citation: 2015 FC 225

Ottawa, Ontario, February 19, 2015

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

LI XING CHEN (A.K.A. LI XIN CHEN)

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] The applicant seeks to set aside a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board), dated November 26, 2013, which found that she was neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). For the reasons that follow the application is dismissed.

II. Facts / The applicant's evidence

[2] The applicant, Li Xing Chen, is a 33 year old citizen of China. The applicant married her husband on January 24, 2006 and their first child, a daughter, was born on December 7, 2008. After her daughter was born, the applicant was required by the family planning authorities to use an IUD as contraception.

[3] In May, 2011 the applicant suspected she was pregnant. Her suspicion was subsequently confirmed by a doctor. During an evening out, her husband shared the news with work colleagues, one of whom reported the applicant's pregnancy to the local Birth Control Committee. Another colleague warned the applicant of this disclosure and the applicant went into hiding.

[4] While the applicant was in hiding, the Public Safety Bureau (PSB) visited the applicant's home for the purpose of taking her in for a forced abortion. Upon being told that the applicant was not home, the PSB ordered the applicant to report to the Birth Control Office immediately for an abortion. The applicant's home was searched and her identification was seized. The PSB has returned to her home on several occasions to look for her.

[5] On August 1, 2011, the applicant's husband was fired from his job because of the applicant's pregnancy and her failure to report for an abortion. One month later the PSB returned to the applicant's home and left a note stating that the applicant was required to have an abortion and that either she or her husband was required to undergo sterilization. After receiving this note, the applicant's husband also went into hiding.

[6] The PSB continued to visit the applicant's home and the homes of her family members. Fearing forced abortion and sterilization the applicant sought the assistance of a smuggler to assist her in fleeing China using a fake Hong Kong passport. She arrived in Canada on September 6, 2011 and made a claim for refugee protection on the same day. Her husband remained in China as the couple could not afford to have him smuggled out of the country. The couple's second daughter was born four months after the applicant arrived in Canada.

[7] On November 26, 2013, the Board dismissed the applicant's claim, primarily on the grounds that she was not credible and would not face persecution if returned to Fujian province on account of her violation of the Family Planning Policy.

III. Decision

[8] The Board found the determinative issue was credibility and concluded that on a balance of probabilities, the PSB and other officials were not seeking the arrest of the applicant and that the authorities may not have even been aware that the applicant was pregnant prior to her leaving China.

[9] The Board made several plausibility findings, including that if the applicant and her husband were truly concerned about keeping the pregnancy a secret, the husband would not have revealed the news to his work colleagues. Consequently, the Board found that on a balance of probabilities, her husband did not tell any of his co-workers about the pregnancy, and therefore none of the co-workers reported the pregnancy to the authorities. The Board also found that the applicant made up an explanation about her husband drinking and revealing the pregnancy as a

result because this information was not included in either her original or her amended Personal Information Form (PIF).

[10] The Board then went on to find that the applicant embellished her story. The Board noted that the applicant's story regarding the disclosure of the pregnancy to the authorities, followed by the PSB visiting her home the next day, did not make sense. Specifically, the Board found it implausible that the PSB would visit and demand the applicant have an abortion the day after being informed of the pregnancy, rather than first trying to verify the pregnancy. The Board also found that it was implausible that the PSB visited the applicant's home on four separate occasions and yet only left a pregnancy termination notice on September 12, 2011, six days after she left in Canada. Finally, the Board noted that there were inconsistencies in the applicant's testimony; for example the applicant was asked how the authorities became aware of her pregnancy, to which she replied "Because I didn't appear for my next IUD check-up appointment." It was only after further probing that the applicant responded "somebody reported me."

[11] The Board also relied on documentary evidence to state that if the applicant was pregnant with a second child, she would be required to pay a fine and would not be subject to a forced abortion. The Board noted that although the documentary evidence did suggest that forced abortions and sterilizations still occur in China, a proper reading of the documentary evidence suggested that abortions and sterilizations affect couples who have inherited genetic diseases – which the applicant and her husband did not have.

[12] The Board also assigned little weight to corroborating evidence provided by the applicant. The Board reasoned that due to the previously noted credibility problems, the letters provided, including letters from her friends, her husband, her mother-in-law and a police report, could not be relied upon. The information contained in the documents was not corroborated by any other credible and trustworthy evidence. Further, the Board found that the applicant had the "capacity and desire to utilize fraudulent documents as evidence by the way she obtained a fake passport and visa which was improperly obtained."

IV. Analysis

[13] The primary challenge to the decision is directed to three findings by the Board with respect to what was characterized by the Board as the plausibility of the claimant's narrative.

[14] Plausibility findings should only be made in the clearest of cases, such as when the applicant's testimony is outside of the realm of what could reasonably be expected or when the documentary evidence demonstrates that the events could not have taken place as alleged. Plausibility findings are predicated on a conclusion that the description of events is so unusual or beyond the scope of common experience and commons sense that they are disbelieved. Plausibility findings are contrasted with findings predicated on inconsistency within the applicant's own testimony, between the applicant's testimony and other documents, material omissions, the lack of precision in testimony or the absence of documentation where documents or corroborative evidence might normally be anticipated.

[15] Caution must be exercised when rejecting evidence on the basis of plausibility; *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776, para 7. There are two reasons for this. First, it is inherently subjective. Second, as I noted in *Ndjavera v Canada (Citizenship and Immigration)*, 2013 FC 452 at para 11: "Refugee claimants come from diverse backgrounds and the events described in their testimony are often far removed from the ordinary life experience of Canadians. What appears implausible from a Canadian perspective may be ordinary or expected in other countries."

[16] Although characterized as such, the first plausibility finding made by the Board is not, in fact, a plausibility finding. However, the characterization of the nature of the finding is of no consequence. The Board found it implausible that the applicant's husband would divulge what was said to be a closely guarded secret of the pregnancy to co-worker while intoxicated. Rather, the applicant told two dramatically different stories with respect to the key events leading to her decision to flee. Before the Board, she testified that, being acutely aware of the family planning policies, they kept the pregnancy secret. In her narrative however, she said that, on receipt of confirmation of her pregnancy "My husband I were very happy to hear this, especially my husband. So, he shared this good news with some of his colleagues at his work unit, one of those was Lian Sheng Chen."

[17] This is an inconsistency within the applicant's own evidence, on a material point. The Board did not believe the applicant.

[18] I turn to the second finding, which is, in fact, a plausibility finding. The Board considered it implausible that officials from the PSB, the Birth Control Committee and the Human Resources officer of her husband's company attended "to arrest her for abortion" the day immediately following her husband's disclosure to his co workers. The applicant managed to avoid arrest only because another employee alerted her to the fact that the authorities were en route to arrest her.

[19] While the Board did not cite any evidence to support its conclusion that a coordinated visit of three agencies would not arrive the morning after her husband's disclosure, the Board was not obligated to accept the testimony, but rather was required to test it in light of common sense and rationality, and the balance of the applicant's evidence. In this regard, further elements of the evidence were considered by the Board.

[20] First, the Board noted that, based on the documentary evidence, the Family Planning Administrative Department must give permission for any "corrective action." The applicant's evidence, however, was that she was to be arrested for a forced abortion the very day after her husband disclosed the pregnancy. The applicant would have the Board believe that the preliminary administrative step was being overlooked by the authorities.

[21] The Board also considered the evidence that the PSB visited the applicant's home on four separate occasions, and those of her immediate family on a further nine occasions between June 21 and September 12, 2011. Nevertheless, it only left the pregnancy termination notice on September 12, 2011, a week after the applicant departed. The official stamp on the notice is

unclear and could not be translated and although issued September 12, 2011, demands that the applicant attend for an abortion "the next day." Although the authorities interviewed the applicant's husband in late June, no notice was left with him at that time and he was not arrested.

[22] This case falls squarely with *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62. The Board conflated plausibility with credibility findings and did not precisely elaborate on the reasons why it considered the visits of the PSB to be implausible. However, having regard to the record and the reasons, it is readily apparent to the Court why the Board made the decision that it did. The outcome, and the reasoning by which it was reached, is both intelligible and transparent.

[23] It is a basic principle of the refugee law that the risk of persecution is assessed prospectively, or put more simply, refugee law is forward looking. Here, the applicant fled a risk of abortion. She has had the child and the fear that precipitated flight has evaporated. Although the applicant says that she and her husband still fear a risk of forced sterilization, that risk, is speculative. The Board noted that there are local significant variances with respect to degree and nature of enforcement of Family Planning policies and the Board declined to infer, based on the evidence, that forced sterilization remained a serious possibility.

[24] I accept counsel for the applicant's argument that there is evidence in the record which describes a regulatory enforcement regime which would allow for "corrective measures" in the case of violation of the one child policy. The Board, however, found that "on a whole, a fine rather than forced sterilisation or other harm is more likely than not the kind of penalty that the

claimant would face." The Board considered a wide variety of current documentary evidence in assessing whether the applicant would be subject to a social compensation fee if returned to China or whether she was at risk of forced abortion/sterilization.

[25] The applicant is asking the Court to reach a different conclusion with respect to the same evidence as to prospective risk. The disposition is analogous to that in *Huang v Canada (Citizenship and Immigration)*, 2011 FC 288 at para 26; where Justice Near observed:

> The PA's argument amounts to a disagreement with the Board's assessment and weighing of the evidence. There is no reason for this Court to intervene. The conclusion that the Applicant's subjective fear is not supported by the objective situation in the Guangdong province is supported by the evidence.

[26] The findings of the Board with respect to this issue were open to it on the face of the record before it. Moreover, there is a long line of jurisprudence to the effect that the fine or "social compensation fee" charged to families that have more than one child is not persecution within the meaning of the Convention; *Huang*, paras 23-26; *Wang v Canada (Citizenship and Immigration)*, 2011 FC 636, para 27.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question for certification.

"Donald J. Rennie"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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