

Federal Court



Cour fédérale

Date: 20160128

Docket: IMM-2037-15

Citation: 2016 FC 99

Ottawa, Ontario, January 28, 2016

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**JINTANG SHEN
RUIZHEN WU
STIVEN JIELIN SHENWU
(AKA STIVEN JIELIN SHEN WU)
JIEFENG KEVIN SHEN WU**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is the judicial review of a decision of the Refugee Appeal Division [RAD] which upheld the finding of the Refugee Protection Division [RPD] that the Applicants were neither refugees, nor persons in need of protection and were excluded from Refugee convention status

by virtue of Article 1E of the *United Nations Convention Relating to the Status of Refugees*,
[1969] CTS 6, 189 UNTS 150:

Article 1E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

II. Background

[2] The principal Applicant and his spouse were citizens of China and claimed that they were temporary residents of Ecuador. Their two children were citizens of Ecuador who were sent to China to be fostered.

[3] The Applicants claimed to practice Falun Gong. They claim that the spouse mailed Falun Gong material to a cousin in China who was subsequently arrested, presumably for practising Falun Gong. The Applicants claim that the Public Security Bureau in China is searching for them. On this basis, they claim that they cannot return or be returned to China.

[4] With respect to Ecuador, the Applicants alleged that the restaurant which they own was targeted by armed gangs. They further allege that state protection is not available to them because the police in Ecuador are working with the gangs. Therefore, they cannot return to Ecuador.

[5] The RPD declined the refugee claim concluding that the Applicants were excluded by reason of Article 1E. That decision was appealed to the RAD.

[6] The RAD found that:

- the RPD had not found the Applicants to be citizens of Ecuador but that they had rights and obligations similar to Ecuadorian nationals;
- there was no basis for asserting a denial of natural justice;
- the Applicants had not discharged the burden of rebutting the *prima facie* that they enjoyed permanent resident status in Ecuador; and
- the Applicants had not rebutted the presumption of state protection by failing to take reasonable steps to seek such protection or showing that such protection was not available.

[7] The issues in this judicial review are whether the findings on Article 1E and on state protection were reasonable.

III. Analysis

[8] The standard of review on each issue is reasonableness (see *Zeng v Canada (Minister of Citizenship and Immigration)*, 2010 FCA 118, [2011] 4 FCR 3, regarding Article 1E, and *Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, [2008] 4 FCR 636, regarding state protection).

[9] In respect of Article 1E, there is no basis for the Applicants' assertion that there were insufficient reasons for the decision. The Applicants failed to establish that their status in Ecuador was temporary.

There is nothing unreasonable about the RAD's conclusion.

[10] With respect to state protection, the Applicants ignored that it was their burden to establish the absence of state protection. The Applicants' position that the UN Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Execution (2013 Mission to Ecuador) – the UN Report – confirms that gangs have infiltrated police is untenable.

[11] The argument regarding gang infiltration, low rates of arrest, low levels of democracy and corruption in the judiciary and the police is based on selective and inaccurate interpretations of the UN Report.

[12] While there is evidence of problems with police and military in border areas of Ecuador and Colombia, there is no evidence that these problems are manifest in Guayaquil where the Applicants reside. A failing in protection in one locale is not evidence of a systemic failure of state protection generally.

[13] Reference in the documentation to gang infiltration was in respect to gang infiltration into communities, not into the police. The UN Report does not state that there is impunity for police misconduct generally.

[14] The Applicants have failed to establish that the RAD, or the RPD before them, ignored relevant facts. They merely wish the Court to substitute its view for that of those two bodies – an impermissible incursion by a court given the reasonableness of the conclusion.

IV. Conclusion

[15] Therefore, this judicial review will be dismissed. There is no question for certification.

JUDGMENT

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

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: JINTANG SHEN, RUIZHEN WU, STIVEN JIELIN
SHENWU, (AKA STIVEN JIELIN SHEN WU), JIEFENG
KEVIN SHEN WU v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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JUDGMENT AND REASONS: PHELAN J.

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