

Federal Court



Cour fédérale

**Date: 20180611**

**Docket: IMM-5181-17**

**Citation: 2018 FC 608**

**Ottawa, Ontario, June 11, 2018**

**PRESENT: The Honourable Mr. Justice Harrington**

**BETWEEN:**

**JINBIN CHEN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Mr. Chen, a Chinese national, arrived in Canada in December 2012. At that time, his wife, who was still in China, was pregnant with their second child. He sought refugee status on the basis that he would be persecuted if returned to China for being in violation of its one-child policy.

[2] This is a legacy claim which was only heard in October 2017. Although Mr. Chen's wife did in fact give birth in May 2013, the one-child policy was rescinded in January 2016 and replaced by a new policy permitting married couples to have two children, and even more in some cases.

[3] A panel of the Refugee Protection Division of the Immigration and Refugee Board of Canada determined that Mr. Chen was not a Convention refugee within the meaning of the United Nations Convention or otherwise a person in need of Canada's protection within the meaning of s 97 of the *Immigration and Refugee Protection Act*. This is a judicial review of that decision.

[4] The panel framed the issue as follows:

[para 9] Whether notwithstanding the change in law, as a person who had a second child prior to the change in China's "one-child" policy, and as a person who was sought by the authorities for violating this policy, would the claimant ... be at risk of forced sterilisation? For the reasons that follow; the panel answers this question in the negative.

[5] The panel determined Mr. Chen was not a refugee on two grounds. The first was that "with the implementation of the new policy ... the claimant's violation of the former policy is now rendered moot". The second ground was that in any event, he had not shown that he would face a serious possibility of persecution; the burden, of course, being upon him.

[6] I think the use of the word "moot" was misplaced. If the case is moot, there would be no possibility of persecution.

[7] Unfortunately, there is no evidence in the record as to how a repealed law is to be treated in China. Mr. Chen's second child was born in violation of China's one-child policy. The question is whether Mr. Chen would be persecuted even to the extent of forced sterilisation were he to be returned to China now. Chinese law is presumed to be the same as Canadian law. Under s 43 of our *Interpretation Act*, one may still be charged for an offence that occurred while the statute was still in force. Thus, in that sense, the claim is not moot. See Walker, *Canadian Conflict of Laws*, 6<sup>th</sup> ed (Toronto, Ont: LexisNexis), (loose-leaf revision 65-11/2017), ch 7 at 7.4 and the *Mercury Bell v Amosin*, 27 DLR (4<sup>th</sup>) 641 (FCA).

[8] Mr. Chen provided articles drawn from the internet which were published prior to the new policy coming into force. There was speculation that a person in Mr. Chen's position would still be persecuted. However, the only internet article produced after the new policy came into force is not helpful. It deals with the forced sterilisation of a Chinese man who had fathered four children, and further noted that the authorities were launching an investigation into the circumstances.

[9] Absent evidence as to how violations under the old policy were now treated, the panel relied upon a British Home Office Operational Guidance Note for China, which had been updated in December 2014. It was open to the panel to conclude that there was not a serious possibility that Mr. Chen would be persecuted.

[10] It was not unreasonable for the panel to conclude that Mr. Chen had not met his onus to establish on the balance of probabilities that he faced a serious possibility of persecution, or that

he would be in danger of being tortured, or face a risk to his life, or a risk of cruel and unusual treatment or punishment as set forth in section 97 of the *Immigration and Refugee Protection Act*.

[11] Consequently, the application will be dismissed. There is no serious question of general importance to certify.

**JUDGMENT in IMM-5181-17**

For reasons given, this application for judicial review is dismissed. There is no general question of serious importance to certify.

"Sean Harrington"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5181-17

**STYLE OF CAUSE:** JINBIN CHEN v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 7, 2018

**JUDGMENT AND REASONS:** HARRINGTON J.

**DATED:** JUNE 11, 2018

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