Federal Court  Cour fédérale

**Date: 20190123**

**Docket: IMM-3140-18**

**Citation: 2019 FC 95**

**Québec, Québec, January 23, 2019**

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

**BETWEEN:**

**SHOU CHENG LI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. OVERVIEW

[1] This is an application for judicial review brought under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] in relation to a Pre-Removal Risk Assessment (PRRA) decision rendered by a Senior Immigration Officer of the respondent (the Officer).

[2] For the reasons provided below, I have concluded that this application should be dismissed.

## II. BACKGROUND

[3] The applicant, Shou Cheng Li, is a citizen of the People's Republic of China (China). He is married with three Canadian-born children.

[4] The applicant arrived in Canada on February 2, 2010, and submitted a refugee application on March 11, 2010. That application was refused on October 11, 2011. The applicant sought judicial review of this refusal but withdrew his application after submitting an application for spousal sponsorship for permanent residence.

[5] That application was refused on August 20, 2015, as the applicant's spouse was deemed to have obtained her permanent residence based on a misrepresentation. Subsequent to this refusal, the applicant was invited to request a PRRA, which was submitted on November 9, 2017. The applicant's spouse is currently pursuing an appeal regarding the misrepresentation finding.

## III. DECISION UNDER REVIEW

[6] The applicant alleged that, in China, he would be at risk of persecution and/or mistreatment as defined in sections 96 and 97 of *IRPA* for having violated China's two-child policy – or Family Planning Policy (FPP).

[7] The Officer refused the applicant's PRRA application on the grounds that:

A. His children are Canadian citizens and not facing deportation. The children's mother is not facing imminent removal either, so it appears that the applicant would arrive in China without his family. Accordingly, there is insufficient evidence that the applicant would be perceived by Chinese authorities to have violated the FPP;

B. China is more tolerant of children born outside of Canada;

C. Even if Chinese authorities were to conclude that the applicant had violated the FPP, the applicant would likely face only a fine, referred to variously as a "social upbringing charge," a "social maintenance fee," or a "social compensation fee." This penalty applies to all individuals in China and therefore does not amount to treatment of the kind contemplated in sections 96 and 97 of the *IRPA*; and

D. The applicant may not be fined if he and his wife comply with regulations under China's local and provincial laws for having a third child.

## IV. ANALYSIS

[8] The applicant takes issue with all of the grounds relied upon by the Officer, but for the purposes of the present case, it is necessary only to deal with the first, concerning the insufficiency of evidence that the applicant would be perceived by Chinese authorities to have violated the FPP.

[9] A key passage on this issue in the Officer's decision is reproduced here:

> From the information before me I find that a "birth permit" is required before the birth of a child in China. I note that the applicant's children are not facing removal from Canada, as they are Canadian citizens by birth. I further note that while the

> children's mother was issued a removal order, it is currently stayed, pending an appeal hearing with the Immigration Appeal Division. From the evidence before me I am unable to conclude that the applicant's wife and children will relocate with the applicant to China. As such, I find that there is insufficient evidence before me to demonstrate that the applicant would be perceived by the Chinese authorities to have violated the Family Planning Policy.

[10] The next paragraph in the Officer's decision begins with "[f]urthermore" and goes on to discuss documentary evidence from 2009 that China is more tolerant of children born outside China. From the word "[f]urthermore," I infer that the 2009 evidence was additional and was not relied on to find an insufficiency of evidence that the applicant would be perceived to have violated the FPP.

[11] The applicant argues that the Officer's conclusion quoted above was based on a view that the Chinese authorities would not find out about the applicant's children abroad because the applicant would not tell them. The applicant argues that the Officer erred in presuming that he would lie to the Chinese authorities.

[12] I disagree with the applicant's premise on this point. There is no suggestion in the Officer's decision that the applicant would lie or withhold the truth. I read the above-quoted passage as a conclusion that, without more evidence, there was not enough to demonstrate that Chinese authorities would perceive a violation of the FPP, regardless of whether they became aware of the existence of the applicant's Canadian-born children living in Canada.

[13] To counter this point, the applicant submits that there is abundant evidence that, generally speaking, having three children is a violation of the FPP. The applicant also submits that there is

no evidence, other than the 2009 evidence mentioned above (which was not relied on), to support a view that the applicant's situation in China would be different if his children did not follow him there. Though the Officer did not discuss reasons that Chinese authorities might be unconcerned about the applicant's children abroad, s/he clearly had that view. Accordingly, I must consider whether the Officer's conclusion in this regard was reasonable.

[14] There were grounds on which the Officer might have been relying. For example, since the children were born in Canada (and are hence Canadian citizens), they would likely not be considered Chinese citizens. More importantly, so long as the children remain in Canada, they do not represent a burden or a cost to China. It would be surprising if sanctions for violating the FPP would be applied in relation to non-citizen, non-resident children. In my view, it was entirely reasonable for the Officer to expect the applicant to bear the burden of proving his assertion that he would be perceived to have violated the FPP and would be subject to sanctions as a result.

[15] Since the Officer did not err in concluding that the evidence was insufficient to find that the applicant would be perceived by Chinese authorities to have violated the FPP, it follows that it is not necessary to address alternative issues based on the applicant being subject to sanction. Moreover, since the Officer, in reaching this conclusion, did not rely on the 2009 evidence stating that China is more tolerant of children born outside China, it is also not necessary to address the applicant's argument that reference to that 2009 evidence represented a denial of procedural fairness.

[16] The applicant notes that his wife's status in Canada is precarious. She may be forced to leave Canada for China at some point. If so, the applicant's children may have to follow, since

both of their parents would be there. This would change the current circumstances in which the children do not represent a burden or a cost to China. The Officer took note of this situation, but was "unable to conclude that the applicant's wife and children will relocate with the applicant to China." In my view, the applicant's concern that his children will eventually have to go to China must be considered merely hypothetical. This concern could be addressed later, if necessary, in the context of a separate PRRA application by the applicant's wife and/or children. I am satisfied that the Officer's analysis on this issue was reasonable.

## V. CONCLUSION

[17] For the foregoing reasons, the present application will be dismissed.

[18] At the hearing, the parties agreed that there is no serious question of general importance to certify. Subsequently, the applicant submitted a question for certification. However, that question concerned whether any fine or fee that might be imposed by Chinese authorities would justify stopping the applicant's removal. Since I have found that the Officer reasonably concluded that the evidence does not indicate that the applicant will be subject to any such fine or fee, I find that the proposed question is not determinative in this case, and therefore should not be certified.

**JUDGMENT in IMM-3140-18**

**THIS COURT'S JUDGMENT is that**:

1. The present application is dismissed.

2. There is no question of general importance to certify.

"George R. Locke"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-3140-18 |
| **STYLE OF CAUSE:** | SHOU CHENG LI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | JANUARY 15, 2019 |
| **JUDGMENT AND REASONS:** | LOCKE J. |
| **DATED:** | JANUARY 23, 2019 |

**APPEARANCES:**

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| Suzanne Bruce | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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| Attorney General of Canada<br>Toronto, Ontario | FOR THE RESPONDENT |