

Federal Court



Cour fédérale

**Date: 20190124**

**Docket: IMM-2436-18**

**Citation: 2019 FC 94**

**Ottawa, Ontario, January 24, 2019**

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

**BETWEEN:**

**SHAOYING HUANG  
HONGTIAN SU**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Shaoying Huang and her son, Hongtian Su, seek judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB]. The RPD found they were neither Convention refugees nor persons in need of protection under s 96 and s 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] Despite the RPD's questionable analysis of the Applicants' documents, and its unwarranted speculation regarding what the Chinese authorities would do in certain circumstances, I am satisfied that its decision was reasonable. It was open to the RPD to find that Ms. Huang is not a genuine practitioner of Falun Gong, and that she acquired her knowledge of the faith to further a fraudulent refugee claim. The RPD's conclusion that she will not be forced to wear an intrauterine device [IUD] if she returns to China falls within the range of possible, acceptable outcomes. The application for judicial review is therefore dismissed.

## II. Background

[3] Ms. Huang and Mr. Su are citizens of China. They claim to have a well-founded fear of persecution due to Ms. Huang's adherence to Falun Gong, which is considered an "evil cult" and is outlawed in China. Ms. Huang also says she will be forced to wear an IUD if she returns to China.

[4] Ms. Huang states that she was first required to wear an IUD in 1999, in accordance with China's family planning laws and policies, shortly after the birth of her son. Her IUD caused her to have health problems, and in May 2010, a doctor removed it at her request in a state-authorized procedure.

[5] According to Ms. Huang, in December 2010, her doctor detected a pregnancy and ordered her to have an abortion. A second IUD was then inserted in January 2011. Ms. Huang again developed health problems because of the IUD.

[6] At the suggestion of a friend, in August 2011, Ms. Huang turned to Falun Gong for relief. She says this dramatically improved her health, and so she continued to practice her newfound faith despite the risk of arrest by the Chinese Public Security Bureau [PSB]. She joined a weekly practice group in October 2011. However, the group was raided by the PSB on June 10, 2012.

[7] Ms. Huang claims that she had advance warning of the raid from an unspecified source, and was able to escape before the PSB arrived. She hid at her cousin's house. On June 12, 2012, the PSB visited Ms. Huang's home and questioned her husband regarding her whereabouts. She says that the PSB returned to her home on June 14, 2012 and left a summons. She lost her job, and her son was expelled from school. While she was in hiding, she had an unauthorized procedure to remove the second IUD.

[8] With the help of a smuggler, Ms. Huang and her son fled to Canada. They left China using their genuine Chinese passports and fraudulent United States visitor visas. They made their refugee claims in Canada on August 20, 2012. The RPD heard the claims on April 16, 2018, and rejected them on May 1, 2018.

### III. Decision under Review

[9] The RPD did not accept the authenticity of the summons allegedly left by the PSB. Ms. Huang did not mention the summons in her initial Personal Information Form [PIF] submitted on October 26, 2012. She first disclosed the summons in an amended PIF narrative on February 12, 2018. The RPD also noted the absence of a coercive summons. Citing Response to

Information Request [RIR] CHN104188.E (30 November 2012), the RPD concluded it was unlikely that the PSB would issue only a non-coercive summons in its pursuit of an alleged practitioner of Falun Gong.

[10] The RPD also doubted the Applicants' account of their departure from China. The RPD found it unlikely they would be able to leave China using their genuine passports, given China's "Golden Shield" security system and other measures to prevent individuals wanted by the authorities from leaving the country (citing RIR CHN103133.E (02 July 2009)). The RPD also rejected Ms. Huang's testimony that their passports were checked only once at the Hong Kong airport. The RPD acknowledged the mixed jurisprudence of this Court regarding whether it is reasonable to doubt claimants' credibility based on the relative ease with which they leave China, but noted Justice Henry Brown's decision in *Liu v Canada (Citizenship and Immigration)*, 2017 FC 736, where he found a similar analysis to be reasonable (at para 20).

[11] The RPD concluded that Ms. Huang's claims were fraudulent, and that she was not a genuine practitioner of Falun Gong. Her knowledge of Falun Gong was found not to be commensurate with her alleged six years of practice. She was unable to answer simple questions quickly; she failed to mention the need to give up attachments; and she could not explain the meaning of "cultivation", a basic Falun Gong concept. Ms. Huang provided a letter from someone who practices Falun Gong in Canada to confirm her ongoing practice. The RPD gave little weight to the letter, even though its author was a successful refugee claimant, because she did not testify at the hearing. The RPD applied its adverse credibility findings to Ms. Huang's *sur place* claim, and rejected it accordingly.

[12] Finally, the RPD found that Ms. Huang would not be forced to wear an IUD if she returned to China. Ms. Huang said that the Chinese authorities had permitted removal of her first IUD on request because of her health problems; however, there was no evidence to corroborate her claim that she had requested removal of the second IUD and been refused. Citing RIR CHN104963.E (16 October 2014), the RPD concluded that Ms. Huang would likely be allowed to use other contraceptive measures instead of an IUD.

#### IV. Issues

[13] This application for judicial review raises the following issues:

- A. Did the RPD reasonably conclude that Ms. Huang does not have a well-founded fear of persecution based on China's family planning laws and policies?
- B. Did the RPD reasonably conclude that Ms. Huang does not have a well-founded fear of persecution based on her adherence to Falun Gong?
- C. Did the RPD reasonably reject Ms. Huang's *sur place* claim?

#### V. Analysis

[14] The RPD's factual findings and credibility assessments are subject to review by this Court against the standard of reasonableness. The RPD is in a superior position to assess the

evidence, gauge the credibility of witnesses, and draw the necessary inferences. This Court should not interfere unless the RPD based its conclusions on irrelevant considerations or ignored important evidence (*Yared Belay v Canada (Citizenship and Immigration)*, 2016 FC 1387 at paras 21-22; *Thach v Canada (Citizenship and Immigration)*, 2008 FC 658 at para 19).

A. *Did the RPD reasonably conclude that Ms. Huang does not have a well-founded fear of persecution based on China's family planning laws and policies?*

[15] The Applicants argue that the RPD ignored evidence that Ms. Huang would be forced to wear an IUD. In the alternative, they assert that the RPD implicitly revived the discredited notion that forced IUD insertion is not persecutory, contrary to decisions of both this Court and the Federal Court of Appeal (*Zheng v Canada (Citizenship and Immigration)*, 2009 FC 327 at para 13 [*Zheng*]; *Cheung v Canada (Minister of Employment and Immigration)*, [1993] 2 FC 314 (FCA)). The Applicants say that a plain reading of Articles 17 and 19 of the *Population and Family Planning Law of the People's Republic of China*, 2001 Order of the President No 63 [*Family Planning Law*] indicates that the state is the final authority regarding reproduction, and Ms. Huang's choices are much more circumscribed than found by the RPD. The Applicants allege that the RPD unreasonably concluded that alternative contraceptive measures will be available to Ms. Huang.

[16] The Minister responds that country condition evidence before the RPD confirmed the availability of alternative contraceptive measures, and the RPD's findings are entitled to considerable deference (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59-62; *Hernandez Perez v Canada (Citizenship and Immigration)*, 2009 FC 1065 at para 14).

The Minister says the Applicants are asking this Court to reweigh the evidence, which is not the purpose of judicial review (*Horvath v Canada (Citizenship and Immigration)*, 2012 FC 1132 at para 59).

[17] The RPD acknowledged that IUDs are China's preferred contraceptive measure. However, there was also evidence before the RPD that IUDs are not the only measure employed by the state. The RPD observed that nothing in the national *Family Planning Law* or provincial regulations specifies that IUDs are required. The Minister notes that this Court has previously upheld decisions of the Refugee Appeal Division [RAD] of the IRB where the RAD held that the claimant was unable to establish a risk of forced IUD insertion (*Huang v Canada (Citizenship and Immigration)*, 2017 FC 1090 at paras 3-5; *Rao v Canada (Citizenship and Immigration)*, 2017 FC 157 at paras 13, 19-22). Those who fail to comply with China's family planning laws and policies in Guangdong Province, where the Applicants are from, may have to pay fines, but they are unlikely to be required to wear an IUD or be subject to sterilization.

[18] I am satisfied that the RPD reasonably assessed Ms. Huang's claim to have a well-founded fear of persecution based on China's family planning laws and policies. Furthermore, the RPD acknowledged Justice Barnes' finding in *Zheng* that forced IUD insertion is indeed persecutory. The RPD did not attempt to revive the discredited notion that forced IUD insertion is not persecutory, but rather accepted the evidence of available alternatives.

B. *Did the RPD reasonably conclude that Ms. Huang does not have a well-founded fear of persecution based on her adherence to Falun Gong?*

[19] The RPD's conclusion that Ms. Huang is not a genuine adherent to Falun Gong was based on three findings: (a) the questionable authenticity of the summons allegedly left by the PSB, (b) the Applicants' relative ease in leaving China using their genuine passports, and (c) Ms. Huang's inability to answer basic questions regarding her practice of Falun Gong.

[20] The Applicants say that the summons is an official state document, and is therefore presumed to be authentic (*Manka v Canada (Citizenship and Immigration)*, 2007 FC 522 at para 8). They complain that the RPD does not appear to have considered the dismissal notice from Ms. Huang's employer, and the expulsion notice from Mr. Su's school. The Applicants also take issue with the negative inference drawn by the RPD due to the absence of a coercive summons. They note that RIR CHN104188.E, relied upon by the RPD, states that a coercive summons is issued only for non-compliance with a criminal summons, which is not the case here.

[21] This Court has repeatedly warned against making assumptions about how the Chinese authorities would rationally behave, and whether one would expect them to issue a coercive summons (see, for example, *Huang v Canada (Citizenship and Immigration)*, 2017 FC 762, at para 69, *Jia v Canada (Citizenship and Immigration)*, 2016 FC 33 at para 22). Similarly, this Court has rejected adverse findings of plausibility based on applicants' relative ease in leaving China using their genuine passports. As Justice Yves de Montigny explained in *Sun v Canada (Citizenship and Immigration)*, 2015 FC 387 at paragraph 26:



The Board's finding that it was implausible the Applicant would be able to leave China undetected on his own genuine passport while an arrest warrant was issued against him, especially after the PSB had allegedly visited his house eight times looking for him, is equally questionable. The Board based its finding mainly on a Response to Information Request reporting the existence and expansion of a national Chinese policing database used by the PSB and at ports of entry and exit of the country. The same document also mentions that challenges remain with respect to information sharing between regional police units, and the Board itself recognizes that there is wide administrative discretion across the country and that bribery is prevalent in China. It is well established that implausibility findings may only be made in the "clearest of cases" (*Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776, at para 7), where "the facts as presented are either so far outside the realm of what could reasonably be expected that the trier of fact can reasonably find that it could not possibly have happened" (Lorne Waldman, *Immigration Law and Practice* (Markham, ON: Butterworths, 1992), s 8.22, cited in *Divsalar v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 653, at para 24). [...]

[22] However, the RPD's rejection of the summons was not based only on the circumstances surrounding the document, but also on Ms. Huang's failure to mention its existence in her initial PIF. Omissions in prior statements may be used to assess the credibility of evidence (*Liu v Canada (Citizenship and Immigration)*, 2012 FC 440 at para 14). The summons was an important aspect of Ms. Huang's claim, and it was therefore reasonable for the RPD to regard its omission from the PIF as suspicious.

[23] More fundamentally, it was open to the RPD to reject the sincerity of Ms. Huang's adherence to Falun Gong. The Applicants say that the RPD's questioning was overly zealous and akin to cross-examination (citing *Zhang v Canada (Citizenship and Immigration)*, 2012 FC 503 at paras 8, 14, 16-18; *Liu v Canada (Citizenship and Immigration)*, 2015 FC 1140 at para 29). Counsel for the Applicants did not develop this argument in oral submissions. Furthermore, this

Court is poorly-situated to review transcripts of the Applicants' testimony and substitute its credibility assessment for that of the RPD. Determining the sincerity of religious belief is a fact-driven exercise, and the RPD's findings are owed significant deference (*Li v Canada (Citizenship and Immigration)*, 2015 FC 1273 at para 21).

[24] Despite the RPD's questionable analysis of the Applicants' documents, and its unwarranted speculation regarding what the Chinese authorities would do in certain circumstances, I am satisfied that its decision was reasonable. It was open to the RPD to find that Ms. Huang is not a genuine practitioner of Falun Gong, and that she acquired her knowledge of the faith to further a fraudulent refugee claim.

C. *Did the RPD reasonably reject Ms. Huang's sur place claim?*

[25] As Justice Russel Zinn held in *Jiang v Canada (Citizenship and Immigration)*, 2012 FC 1067 at paragraph 27:

[...] the Board must be entitled to import its credibility findings into its assessment of an applicant's *sur place* claim. The Board here found that the applicant had fabricated her story to claim refugee protection. A reasonable inference from that premise is that her current knowledge, appearance in photos, and letters of support were fostered in the intervening two years to support that fraudulent claim.

[26] Similar considerations arise here. The RPD's rejection of the Applicants' *sur place* claim was therefore reasonable.

VI. Conclusion

[27] The application for judicial review is dismissed. Neither party proposed that a question be certified for appeal.

**JUDGMENT**

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

"Simon Fothergill"

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Judge

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

**DOCKET:** IMM-2436-18

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