Federal Court  Cour fédérale

Date: 20211110

Docket: IMM-6152-19

Citation: 2021 FC 1218

Ottawa, Ontario, November 10, 2021

PRESENT: Mr. Justice Norris

BETWEEN:

JIONGCHAO RU
GUILIAN SU
QIANYING RU
RU GUAN CHENG RU SU (A MINOR)

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] Article 1E of the *United Nations Convention Relating to the Status of Refugees*, 189 UNTS 150 ("*Refugee Convention*"), states: "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 nationality in that country." This provision is incorporated into Canadian domestic law by section 98 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[2] The applicants are a family of four: father Jiongchao Ru, mother Guilian Su, their daughter Qianying Ru, and their son Ru Guan Cheng Ru Su. They arrived in Canada from the United States in April 2012 seeking refugee protection based on a fear of forced sterilization in China under the country's One Child Policy. Previously, the applicants had lived in Peru; in fact, the son was born there in 2006. The three applicants apart from the son are citizens of China.

[3] In a decision dated August 27, 2019, the Refugee Protection Division ("RPD") of the Immigration and Refugee Board of Canada concluded that the applicants were excluded from refugee protection in Canada under Article 1E of the *Refugee Convention* because they had status substantially similar to that of nationals of Peru.

[4] The applicants now seek judicial review of this decision under subsection 72(1) of the *IRPA*. They concede that the RPD did not err with respect to the son, who has Peruvian citizenship by virtue of his birth there. However, they submit that the RPD's decision with respect to the remaining three applicants is unreasonable.

[5] For the reasons that follow, this application must be allowed in part. While the RPD's decision with respect to the son is unimpeachable, I am satisfied that its determination that the

other three applicants are excluded from refugee protection under section 98 of the *IRPA* is unreasonable. As I will explain in more detail below, the RPD's conclusion rests on an unreasonable application of the test for exclusion to the particular circumstances of those applicants.

II. PRELIMINARY MATTER

[6] The Notice of Application filed in this Court spells the son's name as Ru Guan Cheng Su Ru. It is clear from the documentation found in the Certified Tribunal Record, which includes a photocopy of his passport, that his correct name is Ru Guan Cheng Ru Su. The style of cause will therefore be amended to reflect the correct spelling.

III. BACKGROUND

[7] Mr. Ru and Ms. Su were both born in China. The couple married in August 1995. Their first child, a daughter, was born in August 1996. The family lived in Guangdong Province. Mr. Ru worked as a driver for the freight department of an airline. Ms. Su had worked at a shoe factory until her daughter was born.

[8] Pursuant to China's One Child Policy, Ms. Su reported regularly to her local family planning office for check-ups on her intrauterine device ("IUD"), a contraceptive implant. In 2004, she suffered an ectopic pregnancy. Ms. Su reported this to the family planning office,

which arranged for an abortion. Following the procedure, Ms. Su developed an infection that prevented her from using an IUD.

[9] In 2006, Ms. Su discovered she was pregnant. She did not report this to the family planning office. Instead, she arranged for a work visa in Peru and left China. She arrived in Peru in or around August 2006. According to the applicants, by leaving China when she did, Ms. Su had failed to attend a scheduled IUD check-up. (Why she was required to attend such a check-up when, on her own account, she could no longer use an IUD is not explained.)

[10] Mr. Ru and the daughter remained behind in China.

[11] Ms. Su gave birth to her son in Peru in December 2006.

[12] Initially Ms. Su worked as a kitchen helper in a Chinese restaurant in Trujillo, Peru. In November 2009, she opened her own restaurant in Trujillo. She held temporary status in Peru as an "investor".

[13] Eventually, Mr. Ru and the daughter obtained visas for Peru in December 2010. They joined Ms. Su and the son there in February 2011. They held temporary status in Peru as "family of resident." Mr. Ru worked as a chef in the restaurant.

[14] The family's intention at the time was to settle in Peru. However, they came to feel unsafe there because of the targeting of Chinese people for violent attacks and robberies. In late

2011, a business belonging to one of Mr. Ru's friends had been robbed by four armed individuals. The business was located only two blocks away from Ms. Su's restaurant. This event made Mr. Ru and Ms. Su even more fearful for their safety in Peru.

[15] Mr. Ru states in his Personal Information Form ("PIF") narrative: "I was very worried about my family's security and lives. However, my biggest concern is that if we could not renew our Peru visa, we would have to return to China and face the family planning policy."

[16] Despite this fear, because of the prevailing conditions in Peru, the family decided to leave Peru and return to China in January 2012. Ms. Su sold her restaurant.

[17] Back in China, Ms. Su learned from her local family planning office that, because she had violated China's family planning policy by having a second child and by failing to attend for an IUD check-up (when she left China in 2006), she would either be required to use an IUD again or she would have to be sterilized. She was not willing to do either. Mr. Ru also feared he would be forced to undergo sterilization.

[18] In December 2011, while they were still in Peru, the applicants had obtained U.S. visitor visas. (Ms. Su testified that the visas were required for them to make the return trip to China.) The visas were valid until December 2012. On the advice of an agent, the applicants decided to seek refugee protection in Canada. They arranged to travel to Canada via the United States. Once they were in the United States, an agent directed the applicants to the Canada/United States

border near Vancouver. They entered Canada irregularly on April 28, 2012. Their claims for refugee protection were submitted on May 10, 2012.

[19] On their respective PIFs, the three applicants apart from the son identify themselves as citizens of China. They describe their status in Peru as "temporary resident." The son is identified as a citizen of Peru. The applicants provided copies of a number of documents including Peruvian foreign national identity cards for Mr. Ru, Ms. Su and the daughter as well as the son's Peruvian birth certificate and national identity card. Certified translations of these documents were provided to the RPD prior to the hearing.

[20] Ms. Su's foreign national identity card indicated an expiry date of August 28, 2011, on the front and, on the back, a second expiry date of July 25, 2016. Similarly, Mr. Ru's and the daughter's foreign national identity cards both indicated expiry dates of February 19, 2012, on the front and, on the back, March 3, 2016.

[21] The applicants' hearing before the RPD was eventually scheduled for August 26, 2012. However, the matter was adjourned so that the RPD could alert the Minister to the issue of the applicants' potential exclusion under Article 1E of the *Refugee Convention* in view of the evidence of their status in Peru. A letter to this effect was sent to the Minister on September 3, 2014. On September 23, 2014, the Minister confirmed his intention to intervene in the proceeding. However, when the matter eventually proceeded on November 22, 2018, the Minister did not participate other than through the submission of documentary evidence relating to the applicants' transit through the United States.

[22] At the RPD hearing, Ms. Su testified that she had to renew her status in Peru annually. She also explained that one's foreign national identity card had to be replaced every five years (hence the expiry date on the back of the card). She had obtained her first one in 2006. The card she provided to the RPD was her second one. She obtained it in July 2011, when her first one expired. When one completed the annual renewal of one's temporary status, a sticker would be placed on the back of the card. The card Ms. Su provided to the RPD has a sticker over the year 2012. The cards for Mr. Ru and the daughter also have similar stickers over the year 2012. Ms. Su confirmed that she had last renewed her status in 2012. She testified that if she did not renew her status each year, it would be lost.

[23] On the other hand, Mr. Ru testified that he understood that the expiry date on the back of the card indicated the duration of the temporary status he had been granted in Peru.

[24] Ms. Su's evidence concerning the need to renew her status annually was consistent with information in the National Documentation Package ("NDP") for Peru. Information in the NDP also indicated that a person's temporary status would be lost if they were away from Peru for more than 183 days in a 12 month period.

IV. DECISION UNDER REVIEW

[25] The RPD found that all four applicants had established their respective personal identities (including nationalities) as claimed. The RPD concluded, however, that all four were excluded from refugee protection in Canada under section 98 of the *IRPA*.

[26] The RPD acknowledged that the applicable legal test is set out in *Zeng v Canada (Citizenship and Immigration)*, 2010 FCA 118. It stated and applied this test as follows:

> Do the three non-Peruvian Claimants have status, substantially similar to that of its nationals, in the third country? In my view, the answer is "yes". There is no evidence that they have lost such status in Peru, much as a Canadian permanent resident does not lose such status until they expressly relinquish it or are found to be inadmissible. Even if they have lost such status, the loss was voluntary. [Ms. Su] failed to acquire citizenship when she had the right to do so; [Mr. Ru and the daughter] had such status and chose not to renew their status when they had the right to do so. Furthermore, there is no evidence before me to indicate that any of the Claimants are unable to return to Peru. And, as we shall see, I find that any alleged risks faced by them in Peru do not rise to meet the requirements of either Sections 96 or 97(1) of the *Act*. Finally, there is no evidence before me to indicate that Canada's international obligations are a relevant factor in the circumstances of this case.

[27] With respect to the son, the RPD found that there was no evidence that he, being a Peruvian citizen by birth, could not return to Peru.

[28] With respect to the other three applicants, the RPD noted that they had provided Peruvian foreign national identity cards. Each of the cards sets out an expiry date on the back: for Ms. Su, July 25, 2018; for Mr. Ru, March 3, 2015; and for the daughter, March 3, 2016. The RPD describes these as "ultimate potential" expiry dates. (As will be discussed below, the RPD appears to have misapprehended the evidence relating to some of the expiry dates.)

[29] The RPD found that the option of remaining in Peru legally was always available to these three applicants. Contrary to what they contended, their status there was not "temporary". Ms. Su had lived in Peru long enough to be eligible to apply for Peruvian nationality by

naturalization but she had failed to do so. (There was documentary evidence before the RPD concerning Peruvian citizenship laws stating that a foreign national could apply for Peruvian nationality by naturalization if they had lived in the country for two consecutive years, had legally exercised a profession, craft or occupation, did not have a criminal record, and showed good conduct and moral integrity.) While Mr. Ru and the daughter had not been in Peru long enough to apply for Peruvian nationality (having been there only for eleven months when they left in January 2012), they could have stayed longer in order to become eligible to apply had they wished. The RPD also found against the applicants because they "[had] not shown that their status in Peru cannot be renewed."

[30] With respect to why the applicants left Peru, while the RPD was willing to extend the "benefit of the doubt" to the applicants concerning their experiences there, it found that these experiences did not establish either a well-founded fear of persecution under section 96 of the *IRPA* or a need for protection under section 97 of that Act. Consequently, in the RPD's view, the applicants did not have a good reason to leave Peru. Rather, given their fears of returning to China, they had a good reason to stay there.

[31] On the basis of this analysis, together with its findings concerning the son, the RPD concluded that all four of the applicants were excluded from refugee protection in Canada under section 98 of the *IRPA*.

V. STANDARD OF REVIEW

[32] It is well-established that this Court reviews the RPD's assessment of the evidence before it, including its credibility determinations, on a reasonableness standard (*Hou v Canada (Citizenship and Immigration)*, 2012 FC 993 at paras 6-15; *Nweke v Canada (Citizenship and Immigration*), 2017 FC 242 at para 18; *Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315 (FCA) at para 4). This standard also applies to the RPD's determination that a claimant is excluded from refugee protection under section 98 of the *IRPA* and Article 1E of the *Refugee Convention* (*Zeng* at para 11; *Majebi v Canada (Citizenship and Immigration)*, 2016 FCA 274 at paras 5-6).

[33] That this is the appropriate standard of review has been reinforced by *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65. Reasonableness is now the presumptive standard of review for administrative decisions, subject to specific exceptions "only where required by a clear indication of legislative intent or by the rule of law" (*Vavilov* at para 10). There is no basis for derogating from this presumption here.

[34] A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). A decision that displays these qualities is entitled to deference from the reviewing court (*ibid*.). When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances (*Vavilov* at para 125).

At the same time, reasonableness review is not a rubber-stamping process; it remains a robust form of review (*Vavilov* at para 13).

[35] The applicants bear the onus of demonstrating that the RPD's decision is unreasonable. Before a decision can be set aside on this basis, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100). See also *Alexion Pharmaceuticals Inc v Canada (Attorney General)*, 2021 FCA 15 at paras 12-13.

VI. ANALYSIS

[36] The governing test for whether a claimant is excluded from refugee protection under Article 1E of the *Refugee Convention* is stated in *Zeng* (at para 28). It consists of the following three questions:

1. As of the date of the hearing, does the claimant have status in a third country substantially similar to that of its nationals?
    - If yes, the claimant is excluded.
    - If no, proceed to the second question.
2. Did the claimant previously have such status and lose it or have access to such status but fail to acquire it?
    - If no, the claimant is not excluded.
    - If yes, proceed to the third question.
3. Considering and balancing all of the circumstances of the case – including the reason for the loss of status (or the failure to acquire it), whether the claimant could return to the

third country now, the risk the claimant would face in their home country, and Canada's international obligations – should the claimant be excluded?

- If yes, the claimant is excluded.
- If no, the claimant is not excluded.

[37] As noted, the applicants accept that the RPD did not commit any reviewable errors in determining that the son is excluded from refugee protection in Canada *vis-à-vis* China by virtue of being a citizen of Peru. They contend, however, that the RPD's determination with respect to the remaining three applicants is unreasonable. I agree.

[38] I begin by noting that the RPD made two findings of fact that are clearly erroneous on the face of the record. First, the ultimate potential expiry date (as the RPD put it) for Ms. Su's foreign national identity card is July 25, 2016, and not July 25, 2018. Second, the ultimate potential expiry date for Mr. Ru's foreign national identity card is March 3, 2016, not March 3, 2015. The RPD must have misread the information on the cards, copies of which are part of the record on this application.

[39] Standing on their own, these errors would be immaterial. More significant is the inference the RPD draws about the meaning of these dates, which is inconsistent with some of the evidence before the decision maker.

[40] The RPD takes the expiry dates for the foreign national identity cards to mean that the three applicants who held those cards had the option of remaining in Peru for that long if they

wished. However, Ms. Su testified that the expiry date on the back of her card only related to the period of validity of the card and had nothing to do with the duration of her temporary status, which had to be renewed annually or it would be lost. On the other hand, Mr. Ru testified that he understood the expiry date on the back of his card to refer to the duration of the temporary status he had been granted. The RPD does not address this discrepancy in the evidence in its reasons or explain why, assuming it considered the question, it preferred Mr. Ru's evidence on this point to Ms. Su's. In any event, even assuming for the sake of argument that the RPD could reasonably infer that the applicants' status in Peru as evidenced by their foreign national identity cards could last for up to five years from the date the card was issued, this is ultimately a red herring because that status would have lapsed before the RPD hearing in any event (in March 2016 for Mr. Ru and the daughter and in July 2016 for Ms. Su).

[41] This brings me to what I consider the fundamental flaw in the RPD's determination with respect to all the applicants apart from the son: a conflation of distinct issues in the *Zeng* test. This resulted in an unreasonable application of the test to the particular circumstances of these applicants.

[42] The first critical error that led to an unreasonable determination is the RPD effectively collapsing the first two steps of the *Zeng* test into one. The first step asks: As of the date of the hearing, do the applicants have status in a third country (in this case, Peru) substantially similar to that of its nationals? The RPD answered this question affirmatively. However, on the evidence before the RPD, there is only one reasonable answer: No.

[43] There was no evidence that, when the RPD heard this matter in November 2018, Ms. Su, Mr. Ru or the daughter had any status whatsoever in Peru. On the contrary, the only evidence was that they had once had temporary status that had to be renewed annually. Their foreign national identity cards indicated Ms. Su, Mr. Ru and the daughter had all renewed their status for the year 2012. However, after they all left Peru in January 2012, there were no further renewals. Even assuming for the sake of argument that it was reasonable for the RPD to consider the "ultimate potential" expiry dates indicated on the back of the foreign national identity cards as evidence of how long the applicants would have had status in Peru, this still entails that, at the latest, their status had expired before the RPD hearing – in March 2016 (for Mr. Ru and the daughter) and July 2016 (for Ms. Su). Either way, the only reasonable determination is that in 2018 these three applicants no longer had status of any kind in Peru. It was therefore necessary to proceed to the second step in the *Zeng* test.

[44] The second step asks: Did the applicants *previously* have status substantially similar to nationals in a third country (in this case, Peru) and lose it or have access to such status but fail to acquire it? Despite its affirmative answer to the first question (which should have been the end of the analysis), the RPD goes on to consider the second step of the test. While the RPD conflated the first two steps of the test, which led to an unreasonable determination under the first step, it did not err in considering the second step of the test. However, its analysis under this step is unreasonable as well.

[45] The RPD appears to have found that the applicants met the first branch of the second part of the test because they had had status in Peru that was substantially similar to that of its

nationals but had lost it. As just discussed, the only status the applicants had in Peru was that of temporary residents. However, the RPD finds that the applicants' status "could not reasonably be described as 'temporary'" because they could have stayed there if they had wished and they lost this only because they chose to leave. This, however, is contrary to the applicants' testimony that their status had to be renewed annually. The RPD does not appear to reject this evidence, which was consistent with information in the NDP. The RPD's failure to explain in any meaningful way why such status was sufficiently permanent to be substantially similar to that of a Peruvian national leaves its determination under the first branch of the second part of the *Zeng* test lacking transparency, intelligibility and justification.

[46] The RPD also appears to hold, in the alternative, that the applicants met the second branch of the second part of the *Zeng* test – i.e. they had had *access* to status substantially similar to Peruvian citizenship but failed to acquire it. This determination is also unreasonable. To understand why this is the case, it is helpful to consider Ms. Su's circumstances first before considering the circumstances of Mr. Ru and the daughter.

[47] The RPD found with respect to Ms. Su that she "failed to acquire citizenship when she had the right to do so." The RPD reiterates this elsewhere in the decision, stating that Ms. Su "failed to apply for Peruvian citizenship when she had the chance" and that she "could have applied for Peruvian citizenship." However, this finding is directly contrary to the evidence before the decision maker.

[48] The following exchange took place between the RPD member and Ms. Su:

MEMBER:	As you heard from the questions I put to your husband there is some question about your status in Peru. Can you tell me what your, your understanding of your status was when you were in Peru?
CLAIMANT 2:	A temporary status.
MEMBER:	Do you know how long you have originally been given temporary status in Peru when you first applied?
CLAIMANT 2:	I have to renew it every year.
MEMBER:	Every year, okay. And, do you do that?
CLAIMANT 2:	Yes.
MEMBER:	And, were you aware that after a couple of years (inaudible) an application for permanent residence in Peru?
CLAIMANT 2:	Yes, I knew and I have tried to apply for a permanent residence in Peru three years later when I started my business in Peru, but it was declined.
MEMBER:	When did you start [your] business in Peru?
CLAIMANT 2:	November 2009.

[49] Ms. Su went on to explain that her application was rejected because of a tax issue and because her work did not qualify under the criteria for naturalization. Later she added that she did not apply again because she did not feel safe in Peru.

[50] This evidence contradicts the RPD's finding that Ms. Su had "failed to apply for Peruvian citizenship when she had the chance." In fact, according to Ms. Su, she applied for citizenship in November 2009 but her application was refused. The RPD does not address this material evidence anywhere in the reasons. I can only conclude that it was overlooked.

[51] Turning to Mr. Ru and the daughter, the RPD held that they "had such status [i.e. status substantially similar to Peruvian nationals] and chose not to renew their status when they had the right to do so." At the same time, the RPD also seems to have recognized that the two had not been in Peru long enough to apply for naturalization – i.e. for two consecutive years. To the extent that I understand the RPD's reasoning, it appears to be that these applicants met the second part of the test because they could have continued their temporary status in Peru until they had lived there long enough to apply for naturalization but they failed to do so. The RPD does not cite any legal support for such a broad interpretation of the second part of the *Zeng* test and I am unaware of any. In my view, the RPD adopted an unreasonably broad approach to this part of the *Zeng* test.

[52] On any reasonable view of the evidence, the Article 1E assessment should have ended in the applicants' favour at the second step. However, even if it were the case that the RPD's analysis could reasonably support an affirmative answer to the second part of the *Zeng* test with respect to all the applicants except the son and it was therefore necessary to consider the third part of the test, I find the RPD's analysis to be unreasonable here as well.

[53] As set out above, the third part of the test requires a balancing of all relevant considerations including the reason for the loss of status (or the failure to acquire it), whether the applicants could return to the third country now, the risk the applicants would face in their home country, and Canada's international obligations.

[54] I have already discussed why the RPD's assessment of the applicants' loss of status (or, in the alternative, their failure to acquire it) under the second step of the *Zeng* test is unreasonable. I would also add that the RPD fails to address meaningfully the applicants' evidence concerning why they gave up their status in Peru – namely, because they did not feel safe there. The RPD found that the applicants did not have a sufficient reason to leave Peru because conditions there did not support a claim for protection under sections 96 or 97 of the *IRPA*. Even assuming for the sake of argument that the RPD reasonably determined that the applicants had not established claims vis-à-vis Peru, this is beside the point. They were not advancing such claims and, in any event, conditions in Peru could still give them a good reason for leaving (which would weigh in their favour under the third step of the *Zeng* test) without having to amount to grounds for protection under sections 96 or 97 of the *IRPA*. The RPD relied on an irrelevant consideration in finding against the applicants in this regard.

[55] Another consideration that must be weighed under the third step of the test is whether the applicants could return to Peru now. The RPD finds against the applicants in this regard because they did not adduce any evidence that they could not. Similarly, the RPD finds it "notable" that the three applicants apart from the son "do not allege that they do not now have a right to nationality in Peru." Indeed, the RPD finds that those applicants "have not shown that their status in Peru cannot be renewed" or "demonstrated that their travel document(s) cannot be renewed, that their residency cards cannot be renewed or re-issued, that a re-entry visa cannot be obtained, or that [. . .] their residency status cannot be renewed."

[56] In the circumstances of this case, this is an unreasonable application of the burden of proof when exclusion under Article 1E of the *Refugee Convention* is in issue.

[57] Refugee claimants do not bear an initial evidentiary burden to show that they are not excluded from protection: see, generally, *Ramirez v Canada (Minister of Employment and Immigration)*, [1992] 2 FC 306 at 314 (CA) (cited with approval in *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40 at para 29); see also, with specific reference to Article 1E, *Shahpari v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 7678 (FC) at para 6 (which also relies on *Ramirez*). Nevertheless, this Court has held that when there is evidence suggesting on a *prima facie* basis that a claimant has status in a third country that would permit them to return there, thereby engaging Article 1E, the onus shifts to the claimant to establish that they do not have such status: see *Murcia Romero v Canada (Citizenship and Immigration)*, 2006 FC 506 at para 8; *Milfort-Laguere v Canada (Citizenship and Immigration)*, 2019 FC 1361 at para 24; and *Tesfay v Canada (Citizenship and Immigration)*, 2021 FC 497 at para 16.

[58] In the present case, apart from the son, the applicants' status in Peru was temporary, not permanent. As I have already explained, the RPD could not reasonably determine otherwise. More to the point, there was no evidence suggesting, even on a *prima facie* basis, that *at the time of the RPD hearing* the applicants had any status in Peru and that they therefore could return there instead of seeking protection in Canada. Even if this may have been the case when the applicants first sought protection in Canada in 2012, on the only reasonable view of the evidence, it was no longer the case in 2018. Their status in Peru had expired before then.

Consequently, it was unreasonable for the RPD to draw an adverse inference from the failure of the applicants to demonstrate that they could not return to Peru in 2018. In the circumstances of this case, there was no onus on the applicants to adduce any such evidence. Once again, the RPD appears to have conflated two distinct issues: what is the case at the time of the hearing (the first step of the *Zeng* test) and what was once the case (the second step of the *Zeng* test).

[59] Finally in this regard, the RPD does not address the question of the applicants' risk in China or consider Canada's international obligations apart from a puzzling reference to there being "no evidence [. . .] to indicate that Canada's international obligations are a relevant factor in the circumstances of this case."

[60] In short, the RPD's analysis under the third part of the test cannot withstand scrutiny because it fails to take account of relevant factors and it assesses other relevant factors unreasonably.

[61] The application of the *Zeng* test is central to the issue the RPD found to be determinative in this case – the applicants' exclusion under Article 1E of the *Refugee Convention*. The fundamental flaws in the RPD's analysis at each step of the *Zeng* test with respect to all of the applicants except the son entail that its conclusion that they are excluded from refugee protection is unreasonable.

VII. CONCLUSION

[62] For these reasons, the application is allowed in part. The RPD's decision dated August 27, 2019, finding that the applicants Jiongchao Ru, Guilian Su, and Qianying Ru are excluded from refugee protection under section 98 of the *IRPA* is set aside and their matters are remitted for redetermination by a different decision maker. The application for judicial review on behalf of Ru Guan Cheng Ru Su is dismissed.

[63] The parties have not suggested any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that none arise.

JUDGMENT IN IMM-6152-19

THIS COURT'S JUDGMENT is that

1. The application is allowed in part. The Refugee Protection Division's determination that the applicants Jiongchao Ru, Guilian Su, and Qianying Ru are excluded from refugee protection under section 98 of the *IRPA* is set aside and their matters are remitted for redetermination by a different decision maker.
2. The application for judicial review on behalf of Ru Guan Cheng Ru Su is dismissed.
3. The style of cause is amended to reflect the correct name of the applicant, Ru Guan Cheng Ru Su.
4. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6152-19
STYLE OF CAUSE:	JIONGCHAO RU ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	AUGUST 13, 2021
JUDGMENT AND REASONS:	NORRIS J.
DATED:	NOVEMBER 10, 2021

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