

Date: 20091014

Docket: IMM-4793-08

Citation: 2009 FC 1031

Ottawa, Ontario, October 14, 2009

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

**SUM, KUN TONG
CAO, CUI ZHI
SUM, XIAO LAN
SUM, MAN YEE
SUM, YIN CHING**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This case involves judicial review of a negative Pre-Removal Risk Assessment (PRRA) decision made by a PRRA officer (the Officer) and dated September 8, 2008 (the Decision).

[2] The Decision dealt with risks identified by a family of six from China (two parents, three daughters and one son). The Mother and Father (who were 51 and 53 years old at the time of the Decision) fear forced sterilization on their return to China.

[3] Before they fled to Canada, the Parents were agricultural residents of Guangzhou City, in Guangdong Province. As such, they were entitled to have two children and they had two daughters who were 22 and 20 years of age at the time of the Decision. Following their birth, the Parents had a third daughter and a son who were 18 and 16 years old at the time of the Decision.

[4] The three daughters (who are not married) fear the compulsory insertion of intrauterine devices (IUDs) after they give birth to their first children, and the two youngest children (the boy and the third girl) fear persecution because their births were not registered in their family's household registration booklet.

[5] The Parents paid fines totalling 13,000 RMB for their third and fourth children but were not allowed to register their births. Then, the Mother received notices dated August 7, 1997 and August 4, 1998 indicating that she was required to undergo sterilization.

[6] In response, the Mother and her two eldest daughters fled to Canada on September 2, 1998 and claimed refugee status the following March. The Father and the younger daughter and son entered Canada on March 28, 1999 and claimed refugee status in June of that year. The family's

two refugee claims were heard together and denied on December 16, 1999. That decision was not the subject of an application for judicial review.

[7] On February 27, 2008, the family filed a PRRA application, and a submission was filed by their lawyer on March 10, 2008. It included copies of two receipts for the fines, copies of the sterilization notices sent to the Mother and a copy of the Household Registration Booklet. It also listed eight publicly available documents. However, it did not append any affidavits dealing with pertinent information such as:

- Evidence from family members in Guangzhou City (the Father has three sisters and two brothers living there) about current local family planning enforcement. This evidence might have indicated whether forced sterilizations are performed on similarly situated adults in their 50s, whether parents who have paid fines have been allowed to register their “extra” children, and whether such children are now being treated equally with children born under the family planning regime.
- Evidence from the daughters indicating whether they were interested in marriage and motherhood, whether or not they supported China’s family planning policy, and whether they would consent to the insertion of an IUD once they had borne their first children.

[8] In *Chan v. Canada (Minister of Employment and Immigration)*, [1995] 3 S.C.R. 593, the Supreme Court considered Mr. Chan’s fear of forced sterilization in China. At paragraph 137 of the decision, Mr. Justice John Major, writing for the majority, made the following statement:

The appellant failed to adduce any evidence for the Board that forced sterilization is actually carried out and not merely threatened by the local authorities in his area. Evidence with respect to the enforcement procedures utilized within a claimant's particular region at the relevant time should be presented to the Board. Where such evidence is not available in documentary form, the claimant may still be able to establish that the fear was objectively well-founded by providing testimony with respect to similarly situated individuals. This liberal approach to establishing the facts which represents a significant relaxation of the usual rules of evidence is intended to grant the claimant the benefit of the doubt in cases where strict documentary evidence may be lacking. This approach is fully consistent with the guidelines set out in the UNHCR Handbook:

43. These considerations need not necessarily be based on the applicant's own personal experience. What, for example, happened to his friends and relatives and other members of the same racial or social group may well show that his fear that sooner or later he also will become a victim of persecution is well-founded. The laws of the country of origin, and particularly the manner in which they are applied, will be relevant. The situation of each person must, however, be assessed on its own merits.

In this case, the appellant failed to provide either documentary evidence or anecdotal evidence to substantiate his claim that the pressure from the Chinese authorities to submit to sterilization would extend beyond psychological and financial pressure to actual physical coercion.

[9] The absence of anecdotal evidence in the present case about the situation in Guangzhou City is significant because many of the publicly available documents are not helpful. This is so because the methods of enforcement used by Family Planning officials at the local level vary greatly from province to province and from city to city.

[10] Against this background, I will deal with the risks at issue.

THE PARENTS

[11] They fear sterilization on their return to China for having twice violated the Family Planning Policy. The Applicants say that the Officer's selective reading of the documents described below amounted to a failure to consider all the relevant evidence.

[12] With regard to Guangzhou, the Officer relied on the Immigration and Refugee Board's (IRB) report CHN43165.E dated February 21, 2005 which read, in part:

Reports of specific incidents of forced abortions or forced sterilization in the regions of Guangzhou and Fuzhou could not be found among the sources consulted by the Research Directorate [...]

[...]

In regards to local family planning regulations in Guangzhou, according to the director of the family planning technological department in Guangzhou's population bureau, the region experienced relatively few unplanned births and population control was no longer a "prickly problem" (China Internet Information Center 4 Nov. 2002). With Guangzhou recording low birth rates and a preponderance of single-child families, officials are turning their attention to men's reproductive health and "improving the quality of the population" (ibid.).

[my emphasis]

[13] The Applicants say that this report was prepared to deal with birth planning policies in Guangzhou and not with forced sterilization. However, the statement that evidence of forced sterilization "could not be found" suggests that the issue was investigated. In these circumstances, the fact that no evidence was found was significant, and it was reasonable for the Officer to

conclude that, even for couples of child bearing age, the authorities in Guangzhou would be unlikely to require forced sterilization.

[14] The Applicants also complain that this report was not reliable because it was dated in 2005. However, in the absence of any evidence of changed circumstances, I am satisfied that it was reasonable for the Officer to give it consideration.

[15] The Officer's Decision also shows that he relied on IRB report CHN43031.E to suggest that fines would be used to enforce family planning. The Applicant says that the report doesn't mention sterilization because it wasn't prepared for that purpose. It was prepared to deal with new regulations in Guangdong Province in 2002, and forced sterilization was not part of the regulations. However, what the Officer actually concluded having read the new regulations was that fines were "more likely" to be imposed than forced sterilization. In my view, this was a reasonable conclusion given that the new regulations spoke of significant fees.

[16] The Applicants fault the Officer for selective use of sources and for failing to rely on the most recent US DOS report of March 11, 2008 which said at page 14:

[...] In the case of families that already had two children, one parent was often pressured to undergo sterilization. [...]

[17] My difficulty with this submission is that I am satisfied that the statement applies to families in which the parents are still of child bearing age. It is not obvious that it applies to parents, such as

the Applicants, who are in their 50s and whose last child was born seventeen years ago. For this reason, I have concluded that the Officer did not err in failing to refer to this document.

[18] The Applicants also criticize the Officer for failing to mention IRB CHN102495.E dated May 10, 2007. It considered whether forced sterilizations were still occurring and said that they did occur at the hands of local authorities although they were illegal. However, because this statement did not focus on Guangzhou, it is my view that the Officer was not required to mention it in his decision.

[19] Lastly, the Officer referred to a statement made by a German expert on China who said the following in a seminar report dated March 17, 2006:

[...] The regulations of [...] Guangdong [...] have other [unspecified] punishments for contraventions [of family planning law]. It is very common not only to terminate out-of-plan pregnancies, but also to sterilize one of the parents.

[20] The comments made above regarding the US DOS report also apply here. Since the parents in this case are highly unlikely to experience a pregnancy, they are unlikely to contravene the family planning law or face sterilization.

THE UNREGISTERED CHILDREN

[21] The Applicants suggested that the Officer overlooked the fact that the two youngest children had not been registered. However, the Officer noted that he had no evidence from the Applicants

about whether, since the Parents had paid the fines, the “[...] authorities in Guangzhou City continue to regard those two children as unregistered or “black” children.” This suggests to me that the Officer was aware of the Applicants’ submission that, in spite of payment of the fines, they had been unable to register their two youngest children before they left China.

[22] The Applicants are critical of the Officer’s reliance on what they describe as a “vague” statement in IRB Report CHN102496.E dated May 11, 2007 about recent moves to register unapproved children. The report said in part:

[i]t is still quite common [in China] for unplanned, hence “unapproved,” children to be unregistered. In some places, very recently, there are moves to register them as well, [and] disregard the family planning issue (especially if an excuse of good guanxi [informal networking or connections] can be found). But the parents, especially in the remote rural areas, are not very forthcoming [in registering their children] because the fear of fines, etc. may still be real.

[23] However, in concluding that the unregistered children were not at risk, the Officer did not rely on that passage and its suggestion that registrations were beginning. Rather, he relied on the fact that the fines had been paid and on a further statement in the same report which read:

An 11 August 2005 article in Reproductive Health, a “peer-reviewed online journal focusing on all aspects of human reproduction” (Reproductive Health n.d.), similarly notes that children born outside of China’s family planning regulations may not be registered by the authorities or be “treated equally,” unless their parents pay a fine (ibid. 11 Aug. 2005, 3).

[24] Lastly, although the Applicants referred to this report in support of their submissions without suggesting that it was unreliable, they now say that it is wrong when it suggests that paying

finer leads to registration and equal treatment. They say that, if the footnotes for this statement are checked, the underlying information came from the late 1980s and is out of date. In my view, this submission cannot succeed. There is no duty on an officer to conduct in depth research to check the status of footnotes in the IRB's reports when they have been relied on by an applicant without qualification.

[25] In any event, in the absence of any evidence from the Applicants that circumstances have changed, there is no reason to conclude that the IRB Report is wrong when it says that payment of a fine entitles children to registration and equal treatment. The Officer's conclusion was supported by the evidence and was therefore reasonable.

THE THREE DAUGHTERS

[26] The concern is that, after marrying and giving birth to their first children after their return to China, these young women may not consent to the insertion of an IUD and may face forced insertion. On this issue, the Officer reached the following conclusion:

[...]

Secondly, counsel states in the PRRA submission that the three sisters will be persecuted by local authorities through the imposition of the compulsory use of an IUD birth control device. However, since the USDOS report noted that IUDs and female sterilization account for over 80% of birth control methods employed in China, I find that the applicants have failed to demonstrate a nexus between their particular circumstances and the five grounds of persecution. In other words, since IUDs are so widely used by all segments of Chinese society I find that no one race, nationally, religion, particular

social group or political opinion has been discriminated against by the use of IUDs.

[27] The Applicant says that this statement discloses an error of law because, although the Officer appears to be dealing with the issue of persecution under section 96 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the IRPA), he does not consider whether the persecution arises from the language or enforcement of a law of general application.

[28] In my view, the Officer's statement is confusing for a number of reasons. First, IUDs are not widely used by all segments of Chinese Society, they are only used by women. Second, the passage does not distinguish between the compulsory use of IUDs and their forced use. They may be compulsory and inserted without objection. Their use is not the issue. It is their insertion without consent that is the potential problem for the three daughters. However, as noted earlier, there is no evidence to suggest that the daughters have any objection to the compulsory use of IUDs.

[29] There is no doubt that the Officer's reasoning is unclear but, in my view, his error is immaterial because in the absence of any evidence about their marital or parental intentions and their views about IUDs, the Officer could not conclude that the daughters face even the slightest possibility of the forced insertion of IUDs.

[30] No question is certified for appeal.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that, for the reasons given above, this application is hereby dismissed.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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