

Federal Court



Cour fédérale

Date: 20110310

Docket: IMM-1972-10

Citation: 2011 FC 288

Ottawa, Ontario, March 10, 2011

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

**SUISHAN HUANG
JIA HAO HUANG (A MINOR)**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated March 11, 2010, wherein the Applicants were determined to be neither convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, RS 2001, c 27 [IRPA].

The Board determined that based on the evidence and because of its negative determinations as to credibility, the Principal Applicant (PA) failed to establish more than a mere possibility that she

would be persecuted or that she would be personally subjected to a risk of cruel and unusual treatment or torture.

[2] Based on the reasons below, the application is dismissed.

I. Background

A. *Factual Background*

[3] The PA, Suishan Huang, and her son, Jia Hao Huang, the minor applicant, are both citizens of the People's Republic of China (PRC). The PA is the designated representative of the minor applicant. The PA fears persecution at the hands of the Chinese family planning officials because she violated the PRC's birth control policies.

[4] The PA alleges that shortly after the birth of her daughter in October 1996 she was required to wear an intrauterine device (IUD) to prevent further pregnancies in compliance with the PRC's One-Child Family Planning policy. However, the PA realized in May 2002 that she was pregnant again and so went into hiding to avoid her pregnancy check-ups. The PA gave birth to her son in January 2003 and left him in the care of her aunt. She had her IUD reinserted and returned home.

[5] While the PA was in hiding she missed one of her IUD check-ups. Birth control officers approached her husband who told them that she was sick and away for medical treatment. Upon her return she attended a check-up and was fined 5,000 RMB for missing her regular IUD check-up.

[6] The PA's aunt was able to obtain an Outpatient Record Card from the First People's Hospital in Guangzhou City for the minor applicant, and he was successfully treated for non-serious illnesses. However, in July 2006 the minor claimant came to the attention of the hospital's birth control officers when he had to be admitted for a more serious illness.

[7] The PA's aunt called her to warn her that the minor applicant had raised the suspicions of the birth control officers. The PA and her husband decided to go into hiding, fearing that they might be in trouble, while the PA's mother was sent to retrieve the minor son. Two birth control officers visited the PA's home and left a Family Planning notice with the husband's parents. The notice indicated that either the PA or her husband were to be sterilized for violating the Family Planning policies, and that they had to pay a 70,000 RMB fine within one week.

[8] One week after that visit, the birth control officers returned, accompanied by two police officers. They left a Public Security Bureau (PSB) Notice to attend an inquiry. The PSB notice also indicated that they were subject to a 50,000 RMB fine.

[9] Fearing forced sterilization, the PA and her husband located a smuggler, who agreed to help the PA flee by posing as her partner. The smuggler agreed to take the minor applicant and provided both Applicants with a false passport.

[10] The Applicants arrived in Canada on August 13, 2006 and applied for refugee protection the same day.

B. *Impugned Decision*

[11] The Board determined that the PSB Notice was, on a balance of probabilities, fraudulent. The Board also came to the conclusion, on a balance of probabilities, that the minor applicant's medical booklet was not genuine. From the submission of these two fraudulent documents the Board drew a negative inference regarding the PA's credibility.

[12] The PA also omitted specific information in her PIF. During the hearing of this claim, the PA testified that her mother was forcefully sterilized in 1987. Although the Applicant claimed to have learned this prior to hearing, she did not amend her PIF or have allegedly corroborating documentary evidence translated. The Board found it unreasonable that the Applicant would not have made efforts to enter this information into evidence and determined that the PA embellished her oral testimony, further supporting the inference that the PA was neither credible nor trustworthy.

[13] Furthermore, the Board found that the PA's evidence was inconsistent with the documentary evidence. Firstly, the documentary evidence indicates that a couple would only be subject to one fine for violating the family planning policies, not two as the PA alleged. Secondly, there have been no reports of incidents of forced sterilization in the PA's home municipality, the Guangzhou urban area, among the sources consulted by the Immigration and Refugee Board's Research Directorate for the period 2002 – 2005. Furthermore, family planning officials are no longer evaluated on the basis of meeting birth quotas, but on the care being provided. Based on the foregoing, the Board

found that, on a balance of probabilities, the PA's subjective fear of persecution was not supported by the objective situation in Guangdong province.

II. Issues

[14] The issues raised in this application are:

- (a) Did the Board err in failing to consider the Neighbourhood Committee Notice requiring the PA to be sterilized?
- (b) Did the Board err in finding, on a balance of probabilities, that the PA's subjective fear of persecution was not supported by the objective situation in Guangdong province?

III. Standard of Review

[15] It is well-established that decisions of the Board as to credibility are factual in nature and are therefore owed a significant amount of deference. The appropriate standard of review is a standard of reasonableness (*Lawal v Canada (Minister of Citizenship and Immigration)*, 2010 FC 558, at para 11; *Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315, 42 ACWS (3d) 886 (FCA) at para 4).

[16] Similarly, the weight assigned to evidence and the interpretation and assessment of evidence are all reviewable on a standard of reasonableness (*N.O.O. v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1045, [2009] FCJ No 1286 at para 38).

[17] As set out in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, reasonableness requires consideration of the existence of justification, transparency, and intelligibility in the decision-making process. It is also concerned with whether the decision falls within a range of acceptable outcomes that are defensible in respect of the facts and law.

IV. Argument and Analysis

A. *The Board Did Not Fail to Consider the Notice*

[18] The PA submits that the Board failed to indicate in its reasons the impact, if any, the Neighbourhood Committee Notice had in coming to the conclusion that the PA was neither a Convention Refugee nor a person in need of protection.

[19] The Respondent submits that the PA's assertion that the Board made no comment on the Neighbourhood Committee notice is erroneous. The Reasons and the transcript show that the Board had regard to the notice, but decided to give it little weight.

[20] In its Reasons, the Board referred the Neighbourhood Committee notice as the Family Planning notice, and as the Respondent asserts, mentioned it at paragraph 21 of its Reasons. This notice allegedly fined the PA 70,000 RMB and advised that either the PA or her husband would be sterilized. This notice was received prior to the PSB notice which fined the couple 50,000 RMB for the same offence. Based on the documentary evidence which indicated that the PA and her husband would be subject to one fine and not two, the Board decided to attribute little weight to the Family

Planning notice, and no weight to the PSB notice, which the Board had previously determined to be fraudulent.

[21] As the Respondent submits, there is no merit to the PA's argument. This Court has held that an applicant's overall credibility may affect the weight given to the documentary evidence (*Granada v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1766, 136 ACWS (3d) 123 at para 13). Furthermore, this Court has gone so far as to hold that where the Board has concluded that the Applicant's claim, including facts to which personal documents refer, is not credible on the whole, it is not an error to fail to explain why the documents which purport to substantiate allegations found not to be credible are not given any weight (*Ahmad v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 471, 122 ACWS (3d) 533 at para 26; *Hamid v Canada (Minister of Employment and Immigration)* (1995), 58 ACWS (3d) 469 (FCTD) at para 21).

[22] Given the Board's findings regarding the authenticity of the other documents and the resulting negative credibility inference, coupled with the evidence in the national documentation package, the Board's decision to attribute little weight to the notice, is entirely justified, transparent and intelligible (*Chen v Canada (Minister of Citizenship and Immigration)*, 2010 FC 282, at para 4). If anything the PA is asking the Court to reweigh the evidence, an activity which is outside the scope of this Court's function on judicial review (*Brar v. Canada (Minister of Employment and Immigration)* (FCA), [1986] FCJ No 346 (QL)).

B. *The Board Did Not Err in Finding that the PA's Fear Was Not Supported by the Objective Situation*

[23] In paragraph 22 of its Reasons, the Board states:

Article 25 of the Guangdong Family Planning Regulations states that “Contraception shall be the first component of family planning;” and “Where there are already two or more children, the first choice shall be ligation for either the husband or the wife.” However, the Panel notes that there have been no reports of specific incidents of forced sterilizations in the Guangzhou urban area, which is the principal claimant’s and her husband’s home municipality, found among the sources consulted by the Research Directorate of the IRB for the period 2002-2005. The Research Directorate of the IRB has contacted a UNFPA representative in China and was informed that local Family Planning officials are no longer being evaluated by government officials on the basis of meeting birth quotas but on the care being provided. For these reasons, the Panel finds, on a balance of probabilities, that the claimant’s subjective fear of persecution is not supported by the objective situation in Guangdong province. The Panel further determines, on a balance of probabilities, that the principal claimant was not at risk of forced sterilization by the Family Planning Bureau in Guangzhou.

[24] The PA submits that the Board used the documentary evidence in a contradictory manner and that the Board’s decision, namely that the PA was not at risk of forced sterilization by the Family Planning Bureau in Guangzhou, was made without regard for the material before it which clearly does not support the finding made by the Board. The PA bases this assertion on articles of the Guangdong Planning Regulations submitted by the PA’s counsel which contemplate sterilization for a couple with two or more children.

[25] The Respondent argues that the Board referred to contradictory evidence, noting that the laws refer to sterilization but then pointing to information indicating that forced sterilizations are not actually being pursued by the authorities. It appears based on the documentary evidence that the

current trend in dealing with the birth of children in excess of the permitted number is to impose fines rather than force the sterilization of the parents, and as a result, forced sterilization is not a probable result of the birth of an additional child. The Respondent submits that this is a reasonable assessment of the documentary evidence, and that the conclusion drawn was therefore open to the Board (*Liang v Canada (Minister of Citizenship and Immigration)*, 2009 FC 86, 176 ACWS (3d) 203 at para 54).

[26] I share the Respondent's view. The PA's argument amounts to a disagreement with the Board's assessment and weighing of the evidence. There is no reason for this Court to intervene. The conclusion that the Applicant's subjective fear is not supported by the objective situation in the Guangdong province is supported by the evidence.

V. Conclusion

[27] In consideration of the above conclusions, this application for judicial review is dismissed.

[28] No question to be certified was proposed and none arises.

JUDGMENT

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

“ D. G. Near ”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1972-10

STYLE OF CAUSE: HUANG ET AL. v. MCI

PLACE OF HEARING: TORONTO

DATE OF HEARING: JANUARY 19, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** NEAR J.

DATED: MARCH 10, 2011

APPEARANCES:

Leonard H. Borenstein FOR THE APPLICANTS

Nicole Paduraru FOR THE RESPONDENT

SOLICITORS OF RECORD:

Leonard H. Borenstein FOR THE APPLICANTS
Barrister & Solicitor
Toronto, Ontario

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General Canada