Federal Court  Cour fédérale

**Date: 20110525**

**Docket: IMM-3375-10**

**Citation: 2011 FC 610**

**Ottawa, Ontario, May 25, 2011**

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

**BETWEEN:**

**MEI YUN LI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of member Coralie Buttigieg of the Immigration and Refugee Board (the Board) dated May 19, 2010, wherein the Applicant was determined not to be a Convention refugee nor person in need of protection pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

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

## I. Background

### A. *Factual Background*

[3] Mei Yun Li (the Applicant) is a Chinese citizen who claims refugee status on the basis of her religion and for violating China's family planning policy. She is the mother of two children, one of whom was born in and remains in China, and the other who was born in Canada. She arrived in Canada on May 6, 2007 and claimed refugee protection on May 10, 2007.

[4] Following a difficult divorce, a friend persuaded the Applicant to attend an underground Christian church in May 2006. The Applicant then began attending the church regularly. On March 27, 2007, a neighbour informed the Applicant that the Public Security Bureau had come to her home earlier that day to arrest her. The Applicant went into hiding, and eventually left China with the assistance of a smuggler.

[5] On October 21, 2008, the Applicant gave birth to her second child. In addition to the alleged persecution by the Chinese authorities for her membership in the underground church, she also claims refugee status because she fears that she would be sterilized if she returns to China and that she will be unable to register her second child. She also fears the exorbitant fines charged for having children out of wedlock and for having more than one child.

B. *Impugned Decision*

[6] The Board found that the Applicant was not a credible witness with respect to several key elements of her story, such as when she began attending the underground church and the authorities' attempts to arrest her. The Board found that the Applicant was not a genuine practicing Christian while she was in China. The Board further found that she would not be at risk of forced sterilization in China, and that the family planning policy was a law of general application and therefore not persecutory.

## II. Issues

[7] This application raises only one issue:

(a) Is the Board's conclusion that the Applicant was not at risk of persecution for violating the family planning policy reasonable?

## III. Standard of Review

[8] The issues before the Court require a deferential standard of review because they deal with the Officer's findings of fact and weighing of the evidence.

[9] The Supreme Court held in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paragraph 53 that "Where the question is one of fact, discretion or policy, deference will usually apply automatically [citations omitted]. We believe that the same standard must apply to the review

of questions where the legal and factual issues are intertwined with and cannot be readily separated."

[10] The Board's conclusions that the Applicant would not face persecution for her religion or for violating the family planning policy are issues of mixed fact and law, as they are based on the Board's application of the law on persecution in the refugee context to the evidence in the record. As such, they attract a reasonableness standard (*Dunsmuir*, above at para 53).

[11] As set out in *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] SCJ No 12 and *Dunsmuir*, above, 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's Determination that the Applicant is Not At Risk of Persecution for Violating the Family Planning Policy is Reasonable*

[12] The Applicant submits that the Board failed to explain its finding that the family planning policy and the fines for violating it are laws of general application and therefore do not amount to persecution. The Applicant argues that the Board was required to provide some analysis as to whether the law is one of general application, but instead just stated a conclusion. The Applicant further submits that the Board should have examined whether, despite being a law of general

application, the policy and accompanying fines are persecutory. Finally, the Applicant submits that the Board erred in determining that her Canadian-born son would not be included in the family planning policy.

[13] The Respondent submits that the Board's reasons as a whole are sufficient. The Respondent further submits that an economic sanction does not amount to persecution, and that the fines for violating the family planning policy are not akin to forced sterilization. The Respondent further submits that, even if the fines may be discriminatory, they are not persecutory. Finally, the Respondent submits that the Board's conclusion that the Applicant's Canadian-born son would not be included in the family planning policy is reasonable.

[14] The Applicant argues that the Board had an obligation to provide reasons as to why it found the family planning policy to be a law of general application, but she has not provided any authority in support of this argument. The Respondent relies on two cases, neither of which is useful in this context: *Valentin v Canada (Minister of Employment and Immigration)*, [1991] 3 FC 390, 167 NR 1 (FCA) dealt with criminal law for staying outside of one's country longer than the exit visa allowed, and *Zolfagharkhani v Canada (Minister of Employment and Immigration)*, [1993] 3 FC 540, 20 Imm LR (2d) 1 (FCA) concerned a conscientious objector claiming refugee protection because of Iran's forced conscription law.

[15] However, the Court of Appeal's decision in *Cheung v Canada (Minister of Employment and Immigration)*, [1993] 2 FC 314, 19 Imm LR (2d) 81, which both parties cite, is informative. *Cheung* considered China's family planning policy and determined that an applicant who faced forced

sterilization for violating it had a well-founded fear of persecution. In considering whether forced sterilization amounted to persecution, the Court accepted that the policy is a law of general application (see paragraphs 16 and 17).

[16] *Cheung*, above, further held that, even though it was a law of general application, it amounted to persecution because the penalty for violating the policy was forced sterilization at the time. Although the evidence indicates that this Applicant will not be forcibly sterilized for breaching the family planning policy, the Applicant also advanced an argument before the Board that the fines were so great as to be persecutory. The Board rejected this argument summarily, stating at paragraph 34 of the decision that "The requirement to pay a fine if a child is born out of plan is a law of general application. It cannot be considered persecutory and a basis for a refugee claim."

[17] This Court has determined that the fines imposed for breaching China's family planning policy are generally not persecutory. The Respondent relies on *Lin v Canada (Minister of Employment and Immigration)*, (1993), 66 FTR 207, 24 Imm LR (2d) 208 (Fed TD), in which Justice Paul Rouleau stated at paragraph 6 that "economic sanctions, as a means to enforce compliance with the law, does [sic] not amount to persecution."

[18] Although the fines for breaching the family planning policy are substantial, the Applicant has not provided any authority to rebut Justice Rouleau's ruling. The Board's reasons on this issue are less than ideal, as no reasoning is given for rejecting the Applicant's argument that the fines are so high that they are persecutory, but the conclusion is clear.

[19] The Applicant also suggests that the fines are persecutory because children born out of wedlock draw a greater fine than children born to a married couple. Because the law is applied differently to married and unmarried women, the Applicant argues that it is not a law of general application and is persecutory. The Respondent argues that not all discrimination is persecution, and cites several cases from this Court which address the difference between the two concepts. Although the fines levied against unwed mothers are higher than those for married couples, there is no evidence that this distinction is discriminatory, let alone persecutory. The sole basis for the Applicant's argument that the fine is persecutory appears to be the amount. However, in the absence of any evidence or argument to this effect, there is no basis for the Court to interfere with the Board's finding that the fine is not persecutory.

[20] The Board considered the Applicant's argument that the fines for violating the family planning policy are persecutory. Although this portion of the decision is quite terse and is lacking in analysis, the conclusion is reasonable.

[21] The Board concluded based on the totality of the evidence that the Applicant's second child would not be included in the family planning policy because he was born in Canada. The Applicant disputes the ultimate conclusion, but has failed to justify any intervention by the Court. The mere fact that the Applicant disagrees with the conclusion, or even that the Court might have come to a different conclusion, is not sufficient to find the conclusion unreasonable. There is no basis for disturbing the weight the Board gave to the evidence.

[22] In summary, the Board's determination that the Applicant would not be at risk of persecution for violating the family planning policy appears to be reasonable. The Applicant disputes the determination, but she has failed to demonstrate that it is unreasonable based on the evidence in the record. As such, the decision cannot be set aside.

## V. Conclusion

[23] No question was proposed for certification and none arises.

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

## 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-3375-10** |
| **STYLE OF CAUSE:** | **MEI YUN LI v. MCI** |
| **PLACE OF HEARING:** | **TORONTO** |
| **DATE OF HEARING:** | **FEBRUARY 16, 2011** |
| **REASONS FOR JUDGMENT AND JUDGMENT BY:** | **NEAR J.** |
| **DATED:** | **MAY 25, 2011** |

**APPEARANCES:**

| | |
|---|---|
| Shelley Levine | FOR THE APPLICANT |
| Nur Muhammed-Ally | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| Otis & Korman<br>Barristers and Solicitors<br>Toronto, Ontario | FOR THE APPLICANT |
| Myles J. Kirvan<br>Deputy Attorney General Canada | FOR THE RESPONDENT |