

Federal Court



Cour fédérale

Date: 20120515

Docket: IMM-6368-11

Citation: 2012 FC 574

Ottawa, Ontario, May 15, 2012

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Applicant

and

MIN YI JIANG

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Minister asks that the decision of the Refugee Protection Division of the Immigration and Refugee Board determining that Ms. Jiang was a Convention refugee in need of protection be set aside. I informed the parties at the conclusion of the hearing that this application must be dismissed. The following are my reasons.

[2] Ms. Jiang is a citizen of China. She was granted a study visa in February 2010; she entered Canada on March 5, 2010, and soon afterwards became involved in a romantic relationship which led to her pregnancy. She is a single-mother to a one-year-old Canadian-born child.

[3] On November 16, 2010, well before the July 2011 expiry of her study visa, she filed a claim for refugee protection. She alleged a risk of sterilization at the hands of her local Family Planning Committee in China. Although the Minister elected not to appear before the Board, written submissions and evidence was filed to the effect that there was no evidence that a woman who gave birth outside China would be subjected to forced sterilization upon return. In short, it was alleged that the China family planning regime did not apply to single mothers of foreign born children.

[4] I agree with the submissions of the Minister that the Board did not specifically address the evidence submitted by the Minister in the reasons for decision given at the conclusion of the hearing.

[5] Specifically, the Board does not mention an Australian research report which indicates that:

Limited information was found in regards to the treatment of returning Chinese who had children while abroad. As mentioned in question 3, some sources report that people returning to China are actively welcomed, and “out-of-plan” children forgiven. The reports detailed below appear to confirm this. Should they be penalised, the available information suggests that the penalty would be a fine/social compensation fee.

[6] Another document relied upon by the Minister, a Response to Information Request of the Board dated January 29, 2009 and which was not referenced by the Board states that “Chinese nationals who have children while abroad may not be subject to the one-child policy.”

[7] The evidence advanced by the Minister is far from conclusive in showing that the applicant would be exempted from the family planning policies in China because her child was conceived in Canada and is a Canadian citizen. Moreover, there is evidence in the record that single women who give birth abroad would be treated no differently than those who give birth in China. Further, although not mentioned in the reasons for decision, it is clear from the transcript that the Member was aware of the position taken by the Minister as she questioned the claimant specifically on it.

[8] As has been held by the Federal Court of Appeal, “the fact that some documentary evidence was not mentioned in the Board’s reasons is not fatal to its decision:” *Hassan v Canada (Minister of Employment & Immigration)*, (1992) 147 NR 317. Moreover, applying *Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, and examining the record as a whole, I cannot conclude that the result reached in this case was unreasonable. It may not be the result I would have reached, but it was a result reasonably open to the Member. As a consequence, the decision cannot be set aside.

[9] No question was proposed for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6368-11

STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP
AND IMMIGRATION v. MIN YI JIANG

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: May 3, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** ZINN J.

DATED: May 15, 2012

APPEARANCES:

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