

Federal Court



Cour fédérale

**Date: 20141003**

**Docket: IMM-7148-13**

**Citation: 2014 FC 940**

**Ottawa, Ontario, October 3, 2014**

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

**BETWEEN:**

**MINYI MAO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. INTRODUCTION**

[1] The applicant seeks judicial review of the decision of the Refugee Protection Division (the « RPD ») of the Immigration and Refugee Board (the « Board ») dated October 11, 2013 wherein the RPD found the applicant to be neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

## II. BACKGROUND

[2] The applicant alleges that she is unable to return to China as she fears that she will continue to be harassed and pressured by her abusive separated husband and his family.

[3] The applicant and her then husband came to Canada in 2009 as temporary foreign workers. The applicant alleges that their relationship was characterized as difficult as he was controlling. His family also did not treat her well. They moved to Canada in an attempt to start over. They worked and resided in Edmonton until late 2010, when the applicant's husband allegedly convinced her to return to China. Upon her return to China their relationship continued to deteriorate. The applicant alleges that he forced her to undergo an abortion. Afterwards she left him and returned to her parents' home. He then allegedly harassed her and made threats against her. The applicant made arrangements to return to Canada on another work visa.

[4] The applicant in making arrangements to renew her work visa, was questioned by Canada Border Services Agency (the « CBSA »). It was determined that the majority of the documents that the applicant used for her application for work were fraudulent. She was denied an extension to her work visa and subsequently applied for refugee protection in June 2012.

[5] After returning to Canada in August 2010, the applicant met, moved in with, and had a child with a Chinese national. The applicant allegedly began making arrangements for divorce proceedings from her estranged husband.

[6] The applicant's husband then filed a case in the courts in China to determine the disposition of the marital assets, in particular the ownership of an apartment that she had purchased with the help of her family during their marriage. In 2011, the Chinese court concluded that the apartment should be divided between the two parties. The applicant and her family refused to obey the court order.

[7] The applicant alleges that her separated husband continues to harass her through her family and by attempting to contact her in Canada.

[8] The applicant alleges that she is unable to return to China as she fears that her husband's revenge for leaving him will ultimately result in physical violence or death.

[9] The RPD found that the applicant was not a Convention refugee because her claim had no nexus to any Convention ground. The applicant has not seriously disputed this finding. The Board also found that there was insufficient credible evidence to support the applicant's claim that she was a person in need of protection pursuant to section 97(1) of the *IRPA*.

### III. STANDARD OF REVIEW

[10] The applicant challenges both the reasonableness of the RPD's findings, which were largely based on credibility, and the fairness of the RPD's procedure in respect of the Board Member's questioning of the applicant and informing the applicant about his concerns about her credibility.

[11] The RPD's finding that the applicant is not a Convention refugee nor a person in need of protection is reviewable on a deferential standard of reasonableness. Issues related to the procedural fairness of an impugned decision are reviewable on the standard of correctness.

#### IV. ANALYSIS

[12] As a preliminary issue, I agree with the respondent's contention that the affidavit filed by the applicant serves little useful purpose in this matter. Affidavits intending to amplify on the meaning to be taken from a transcript are generally inadmissible unless used for the particular purpose of clarifying technical terms or providing insight to some non-controversial or untranscribed statements. In this matter the affidavit describes what the applicant was apparently thinking or her impressions on matters in the hearing. Except in unusual circumstances, the transcript should speak for itself.

##### A. *Issues of the Weight of the Evidence and Credibility Conclusions*

[13] I agree with the respondent that the applicant is asking the Court to reweigh the evidence. There is no basis to conclude that the RPD did not consider the seriousness of the abuse that she suffered – in fact the allegations of abuse were expressly acknowledged in its decision. There was countervailing evidence with respect to the current prospective risk, including that the applicant suffered no violence after she left her husband and remained in China for several months, that she was able to leave her husband in the spring of 2010 and return to her parents' house, that the ongoing dispute between the applicant and her husband was financial in nature, and that she had failed to obey a court order despite claiming fear of her former spouse.

[14] In addition, there were credibility concerns on the part of the applicant which were substantiated by the evidence. It is not a peripheral matter to the issue of the credibility that she submitted fraudulent documents on her temporary visa application. This compelling evidence that she is prepared to say or do anything to obtain permanent Canadian residency.

[15] Moreover, it is not a peripheral matter to provide inconsistent testimony on which partner initiated the divorce, where her well-founded fear is alleged to arise from her former spouse not accepting that the applicant could be in a relationship with another man.

[16] I also can find no reviewable error in the RPD's rejection of the applicant's sister's evidence that she would choose to divorce her husband of 10 years, even though happily married, in order to protect her husband's family from the applicant's former husband. If intimidated by the former spouse to the point of raising a serious risk of harm, I would have thought that the applicant and her family would have obeyed the court order that awarded him half of the matrimonial property. The failure to obey a lawful court order is evidence that economic circumstances appear to have priority over any risk of harm to both the applicant and her family.

[17] With respect to the allegations that the RPD failed to explain why it found the applicant's responses to be vague and lacking in detail, the applicant provided little evidence to the Court in support of her bald allegations that her former husband wanted to harm her in revenge for her leaving him, apart from his anger at her failure to comply with a court order providing him his share of the matrimonial property.

B. *Alleged Failures of Procedural Justice*

[18] Unlike the deferential standard of review on reasonableness, for matters of correctness the Court is entitled to intervene when satisfied that the procedure followed by the decision-maker was not fair having regard to all relevant circumstances (*Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, [2002] 1 SCR 3 at para 115).

[19] After carefully reviewing the transcript, I can find nothing to suggest any unfairness relating to the RPD's treatment of the applicant regarding her sexual abuse. The Board intervened to a limited extent for the purpose of expressing concern about re-traumatizing the applicant over the incidents of marital rape, which evidence was accepted. The panel member pointed out however, that the issue of concern was establishment of risk on a going-forward basis. After reviewing the evidence, the member concluded that the applicant was not in need of protection if returned to China.

[20] I also reject the applicant's argument that she was not provided with an opportunity to respond to the Board's credibility concerns. There are numerous examples where credibility issues were raised with the applicant during the RPD hearing.

[21] In any event, I am not aware of any rule that requires a Board member, after hearing an applicant's explanation to an answer to her question, in order to raise concerns about the credibility of the answer, although it often occurs if it comes to mind. It simply imposes too high a burden on the Board or on any decision-maker for that matter. Moreover, if the applicant is

represented, as in this matter, the onus falls on the applicant's counsel to pose the question that provides the explanation to a troubling answer from the client.

[22] Credibility determinations entail the balancing of a number of factors involving the decision-maker's judgment of the witnesses' testimony and any other contradictory evidence or extrinsic factors, such as demeanor, that arise throughout the hearing. Moreover, these determinations often involve mature reflection on the totality of the evidence after the hearing is concluded, sometimes thinking back on the witness' testimony. This is one of the reasons why, apart from a serious misapprehension of the evidence, an unreasonable implausibility challenge on an important fact, or reliance on significant evidence not presented during the hearing, it is difficult to overturn credibility findings.

## V. CONCLUSION

[23] For the reasons described above, the application is dismissed. There are no issues requiring certification for appeal.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed; and
2. There are no questions certified for appeal.

« Peter Annis »

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-7148-13

**STYLE OF CAUSE:** MINYI MAO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** EDMONTON, ALBERTA

**DATE OF HEARING:** SEPTEMBER 3, 2014

**JUDGMENT AND REASONS:** ANNIS J.

**DATED:** OCTOBER 3, 2014

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