Federal Court  Cour fédérale

Date: 20150114

Docket: IMM-5050-13

Citation: 2015 FC 49

Ottawa, Ontario, January 14, 2015

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

GUANGQIU ZENG,
YANHONG FENG,
JUNYAN ZENG FENG

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA or the Act] of a June 20, 2013 decision by a Senior Immigration Officer [the officer] rejecting the applicants' Pre-Removal Risk Assessment

[PRRA] application. The applicants are seeking to have the decision quashed and an order remitting the matter for re-determination by a different officer.

[2] For the reasons that follow, the application is dismissed.

II. Background

[3] Mr. Guangqui Zeng and Ms. Yanhong Feng [the adult applicants] are citizens of China. Their son Mr. Junyan Zeng Feng [the minor applicant] is a citizen of Chile. The adult applicants have another child, Ms. Jun Li Zeng, who was born in China and lives there with Mr. Zeng's parents.

[4] In 1996, shortly after their daughter was born, Ms. Feng became pregnant again and was forced to have an abortion. In 2000, Ms. Feng became pregnant again and her doctor ordered her to have a second abortion.

[5] In 2002 Mr. Zeng moved to Santiago, Chile after obtaining a work permit. Ms. Feng joined her husband in December 2003, leaving their daughter in the care of her paternal grandparents. The minor applicant was born in Chile in August 2005. In September 2005, Mr. Zeng obtained permanent residency status in Chile, which automatically expires if one is outside of Chile for more than one year without justification. Ms. Feng only received a temporary residency permit in Chile.

[6] In late May 2006, the applicants returned to China. Soon after their arrival, they took the minor applicant to the Heshan Immunization Services to receive his immunizations. The nurses refused to immunize him because, based on the applicants' household registration, the applicants had violated the one-child policy and the minor applicant was considered unlawful. The nurses would only administer the immunizations after the minor applicant was recognized on the household registration. The applicants went to the Birth Control Office [BCO] of the Heshan People's Government and were told that, because they had a child in breach of the Chinese family planning policy, they would need to pay a fine of over 100,000 RMB (approximately $17,000 CAD) and that Ms. Feng would have to be sterilized before their son could be registered in a household register. The BCO staff warned the adult applicants that if they did not comply, their water and power supplies would be cut off, their daughter would be forced to leave school, they would be unemployable, and ultimately they may face imprisonment.

[7] On June 2, 2006, the applicants received a call from a government official stating that the family planning laws would be enforced against them. On June 5, 2006, the applicants were visited by two officials from the BCO and PSB to "remind" them that they "must work with the government to pay off the fine as well as receive a sterilization surgery." On June 6, 2006, the applicants received a formal notice [the 2006 Demand Notice] requesting payment and that Ms. Feng should undergo a sterilization operation.

[8] The applicants, having no money to pay off the fine, felt that they had no other options to consider. They briefly went into hiding at the home of Mr. Zeng's sister before fleeing China, en

route to Chile, but remaining in Canada on June 21, 2006 in transit through Vancouver, claiming refugee protection shortly thereafter. Their daughter remained in the care of Mr. Zeng's parents.

[9] In a statutory declaration dated May 6, 2008, Ms. Cynthia Ou, a Migration Integrity Assistant of the Canadian Consulate General in Guangzhou, China, stated that she contacted the Heshan City Family Planning Bureau [FPB] to verify the authenticity of the 2006 Demand Notice and that an FPB official examined the document and denied that any such "Social Assessments Demand Notice" had been issued against the applicants.

[10] The minor applicant's refugee claim was rejected by the Refugee Protection Division [RPD] on September 16, 2008 because he had not "raised any claim against Chile" and the applicants' counsel conceded that the minor applicant "had no valid claim for refugee protection in Canada." The adult applicants were, however, subject to being removed to China. They were found to be excluded from claiming refugee protection under Article 1E of the *1951 Convention Relating to the Status of Refugees*, Can TS 1969 No 6, as the RPD found they held permanent residence status in Chile at the time of the RPD hearing and that this status attached rights and obligations equivalent to those attached to Chilean nationality. The RPD did not undertake an assessment of the applicants' allegations of risk and made no findings regarding their credibility. The RPD decision was ultimately upheld on appeal to the Federal Court of Appeal (*Canada (Minister of Citizenship and Immigration) v Zeng*, 2010 FCA 118, [2011] 4 FCR 3).

[11] Mr. Zeng's statutory declaration in his PRRA application materials included information that he allegedly received from his parents, Mr. Wen Xin Zeng and Ms. Ying Tao Lu, who

remain in Heshan, China. Three officers visited the home of Mr. Zeng's parents on April 29, 2008 and issued another Demand Notice against the adult applicants for contravening the family planning law, demanding payment of fines totalling $107,510 RMB and that Ms. Feng undergo sterilization [the 2008 Demand Notice]. During this incident, Mr. Bin Zhuo Chen informed Mr. Zeng's parents that Mr. Zeng would "have to answer for embarrassing [his] country for making refugee claims overseas", that he "should expect to be jailed and experience re-education by hard labour," and that the penalties would increase severely if the applicants did not return to China immediately. Mr. Zeng's parents have warned him that the applicants should not return to China because the FPB and PSB knew that they had applied for refugee protection in Canada and that these entities had received official communication from the Canadian government. Since that time, his parents have, allegedly, been visited every three to four weeks by FPB and PSB officers demanding to know the applicants' whereabouts and that his parents influence the applicants to return to China. Mr. Zeng's parents would deny having any contact with the applicants. Mr. Chen threatened to cause the applicants' daughter to be expelled from school for their family's violation of the family planning law and Mr. Zeng's parents have had difficulties registering her for school each year. On July 10, 2012, Mr. Zeng was told by his father that the FPB and two PSB officers had visited them again and seemed to know that the applicants were facing removal from Canada and demanded to know when they would be returning.

[12] The applicants allege that they feared returning to China because they believe that they are at risk for forcible sterilization, imprisonment, fines that they are unable to pay, denial of employment, and denial of hukou (the Chinese household registration required for employment,

education, residency, and accessing social services) for themselves, the minor applicant, and possibly their Chinese-born daughter.

III. Statutory Provisions

[13] The following provision of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations] is applicable in these proceedings:

Immigration and Refugee Protection Regulations, SOR/2002-227	*Règlement sur l'immigration et la protection des réfugiés*, DORS/2002-227
167. For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following	**167.** Pour l'application de l'alinéa 113b) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise :
a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;	a) l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur;
(b) whether the evidence is central to the decision with respect to the application for protection; and	b) l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;
(c) whether the evidence, if accepted, would justify allowing the application for protection.	(c) whether the evidence, if accepted, would justify allowing the application for protection.

IV. Issue

[14] Whether the officer erred in making a veiled credibility finding and therefore failed to hold an oral hearing?

V. Standard of Review

[15] The Supreme Court in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*] held that a full standard of review analysis is not necessary in every instance. Instead, where the standard that is applicable to a particular question before the reviewing court has been well-settled by past jurisprudence, that standard of review may be adopted.

[16] It is well-established that the PRRA decisions are to be assessed using the reasonableness standard of review, given the statutory discretion given to PRRA officers to make findings of fact and to weigh the evidence before them (*Wang v Canada (Minister of Citizenship and Immigration)*, 2010 FC 799 at para 11; *Chekroun v Canada (Minister of Citizenship and Immigration)*, 2013 FC 737 at para 36, 436 FTR 1; *Rathnavel v Canada (Minister of Citizenship and Immigration)*, 2013 FC 564 at para 19). In reviewing decisions on the standard of reasonableness, the Court will not intervene unless the PRRA officer came to a conclusion that is not transparent, justifiable and intelligible and within the range of acceptable outcomes based on the evidence (*Dunsmuir*, at para 47). The reviewing court is not to substitute its own view of a preferable outcome nor reweigh the evidence (*Jiang v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1511 at paras 28-31; *Dunsmuir*, above at para 47; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59).

VI. Analysis

[17] The applicants challenge the officer's conclusion that an oral hearing was not necessary despite his statement that he "did not have any concerns regarding the credibility of the applicants." By that statement I understand the officer to have accepted as credible the applicants' statements concerning events in 2006 outlining threats made by Chinese authorities that Ms. Feng could face sterilization and that demands were being made on them to pay a Social Assessment Demand, with a possibility of imprisonment of Mr. Zeng for any failure to do so, along with other associated threats against the applicants.

[18] However, the officer rejected the application because he was not satisfied with the sufficiency of the evidence to demonstrate the applicants would face persecution or be in need of protection based on the evidence from the intervening seven years since the incidents in 2006. None of this evidence I find raised any significant credibility issues on the part of the applicants. Therefore, were an oral hearing to have been held, it is not apparent that the applicants could have added anything to their evidence beyond that contained in their statements as to what personally occurred to them in 2006, which the officer already accepted as credible.

[19] With respect to the post-2006 evidence provided in the affidavit of Mr. Zeng's father, the officer attributed little corroborative weight to his description of the continuing threats "as recent as last week" in 2012 that the applicants were targeted and would be persecuted upon return to China. This attribution of weight was supported by the officer's finding that there was little evidence that payment notices had been issued for the applicant and that it was unclear why a

copy of the 2008 Notice or of any other documents were not provided. Similarly, the officer found little evidence to support the claim that Chinese authorities were visiting Mr. Zeng's parents' residence every three or four weeks, or that the applicants' daughter may not be able to continue her education. The weight of the father's evidence was also discounted on the basis that it was "reasonable to presume that his parents would have a vested interest in the outcome of the applicants' PRRA application." I find that these conclusions on the weight of the father's evidence do not raise significant credibility issues for which an oral hearing could serve any purpose.

[20] Similarly, there were no credibility issues in respect of the other findings made by the officer, such as the conclusions that, based on the country condition documentation before him or her, there was insufficient evidence to conclude that the applicants having made a claim for refugee protection in Canada would constitute sufficient grounds for a sur place refugee claim or that the Chinese authorities would target failed refugee claimants upon their return to China.

[21] Conversely, the officer gave significant weight to the country conditions documents in support of the application, including that the applicants may have to pay a social maintenance fee upon return to China. However, the officer concluded, based upon the allowance to pay fines in instalments and the absence of evidence on the applicants' inability to pay the fine, that they would not have been able to do so. He also found little evidence to support the fact that those who paid the "social compensation fees" would be imprisoned, or would lose their employment.

[22] In addition, the officer concluded from the documentation that there was evidence of progress in regard to ending forceful sterilizations and that reports of forceful sterilization occurring in 2010 and 2011 in some cities in Guangdong province did not indicate that the practice was occurring on a regular basis or that it was occurring in Heshan city, where the applicants would reside upon their return to China. On this basis, he concluded that the applicants had provided little evidence or information that they would face a personalized risk of sterilization upon their return to China.

[23] I find that none of these conclusions involve credibility findings such that an oral hearing was required under section 167 of the Regulations. Instead, the applicants are challenging the officer's overall findings regarding the sufficiency of the evidence and the weight attributed to it. I conclude that no reviewable error was committed by the officer and that, in effect, I am being asked to reweigh the evidence. This is not my task to undertake where I have concluded that the decision of the officer falls within a range of reasonable acceptable outcomes and is justified by intelligible and transparent reasons.

VII. Conclusion

[24] The application is dismissed. There was no request for a certified question on appeal and none arises.

JUDGMENT

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

"Peter Annis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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