

Federal Court



Cour fédérale

Date: 20160705

Docket: IMM-5273-15

Citation: 2016 FC 753

Ottawa, Ontario, July 5, 2016

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

JINDONG HUANG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision of the Refugee Appeal Division of the Immigration and Refugee Board of Canada [RAD], dated October 21, 2015, that confirmed the Refugee Protection Division's [RPD] determination that the Applicant was neither a Convention Refugee or person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

II. Background

[2] The Applicant, Jindong Huang, is a citizen of China who fears persecution at the hands of the Chinese government for failing to report for sterilization, in violation of China's one child policy. She fears if she returns to China she will be forcibly sterilized.

[3] The Applicant currently has two children. Her son was diagnosed with Tourette's syndrome in 2006, and she and her husband had a daughter in 2010, after having been approved for a second birth permit in 2008.

[4] On December 2, 2014, the Applicant found out at a quarterly pregnancy check-up that she had become pregnant and was subjected to an abortion against her will. The Applicant was issued a notice to report for sterilization and was fined for her unplanned pregnancy.

[5] The Applicant and her husband went into hiding on December 10, 2014, and were informed by relatives that family planning officials had left a notice for both of them to report for sterilization.

[6] The Applicant used a smuggler to come to Canada and her husband remained in hiding, as he did not have a passport.

[7] The Applicant's refugee protection hearing took place over two sittings on May 20 and July 29, 2015. In the decision dated July 31, 2015, the RPD rejected her claim, concluding that the Applicant was not a credible witness [the RPD Decision].

[8] The RAD confirmed the determination of the RPD pursuant to subsection 111(1)(a) of the Act and dismissed the Applicant's appeal [the Decision]. It found that the Applicant would not face a serious possibility of persecution or a risk to life, or cruel and unusual treatment or punishment, or a danger of torture, if she were to return to China.

[9] Citing the Federal Court decision in *Huruglica v Canada (Minister of Citizenship and Immigration)*, 2014 FC 799 at paragraphs 54, 55 [*Huruglica (FC)*], the RAD outlined it would conduct its own assessment of the RPD Decision and come to an independent assessment of whether the Applicant is a Convention refugee or a person in need of protection, while providing deference to the RPD's findings of credibility.

[10] The RAD denied the Applicant's request for an oral hearing pursuant to subsections 110(3), (4), and (6) of the Act since no new evidence was submitted in the appeal.

[11] The RAD then addressed the Applicant's allegation that the RPD had erred in its analysis of her use of a smuggler. The Applicant testified before the RPD that she used a smuggler to get to Canada because she had never travelled before. The RPD noted that the Applicant had provided her current and expired (2006) passports when applying for a visa to Canada, and that

the expired passport indicated the Applicant had extensively travelled. The RPD made a negative credibility finding on the basis that:

- a. the Applicant testified she had no knowledge of the expired passport, yet it contains three different photographs of her; and
- b. the Applicant testified she had only provided the smuggler a single current photo of herself, which does not explain the three different photos in the passport, and later adjusted her testimony, stating that the smuggler actually took a photo of her.

[12] The RAD, “[a]fter its own review and assessment of the evidence”, agreed with the RPD’s finding that the Applicant could not adequately explain the existence of the expired passport and the fact it contained three different photos.

[13] It also gave little weight to the Applicant’s explanation the expired passport was not genuine because she was unable to travel in 2009 due to complications with her pregnancy. The Applicant had provided medical records for herself and her son at the RPD hearing, and the RAD concluded it would be reasonable to expect she should have been able to tender corroborative documentation of such complications, had they indeed occurred.

[14] The RAD agreed with the RPD, concluding that the Applicant was not credible regarding the existence of the expired passport. The RAD determined the passport was genuine, as accepted by Canadian authorities in the visa office in China, and as further supported by the six visas for different countries and accompanying stamps, which show the visas were used.

[15] The RAD further disagreed with the Applicant that the RPD's analysis and rejection of her evidence surrounding her pregnancy, abortion and sterilization was unreasonable.

[16] The Applicant's Birth Control Service Card did not include any information on the December 2, 2014 check-up, at which the Applicant alleges to have been found pregnant and subjected to a forcible abortion. The RPD had rejected the Applicant's explanation that the entry was not made because she was immediately taken for an abortion. Further, the RAD noted that the card itemizes every other check-up the Applicant attended, and cited documentary evidence supporting that the card is a document designed to capture and record whether a person is pregnant.

[17] After its own review and assessment of the evidence, the RAD concluded it is reasonable to expect that the December 2014 check-up would have been included on the Birth Control Service Card. Moreover, the lack of any check-up information undermines the Applicant's allegations that she reported for a check-up on December 2, 2014, was found to be pregnant, and thus that the pregnancy was forcibly aborted.

[18] The RAD was also not persuaded by the Applicant's argument that the RPD's treatment of other documents was unreasonable.

[19] In light of the above adverse credibility findings, the RAD noted that the credibility of the abortion certificate was also called into question, and afforded it little weight, given that:

- a. documentary evidence indicates forgery of documents is commonplace in China;

- b. the abortion certificate is a simple document that lacks features that would assist in establishing its genuineness: namely, it was generated utilizing a word processor, and does not bear the signature or name of the issuing individual or a logo or pre-printed letterhead;
- c. though the Applicant provided other medical documentation, she did not tender any medical confirmation that she underwent an abortion that resulted in extensive bleeding, as alleged; and
- d. the RAD was not persuaded by the Applicant's argument that the abortion certificate did not include the reason the abortion was performed because it is obvious, as there are other reasons why a pregnancy would be terminated outside of violations of the one-child policy.

[20] On the totality of the evidence, and on a balance of probabilities, the RAD concluded that the Applicant's allegation she became pregnant and was forced to have an abortion in December 2014 was not credible.

[21] For the same reasons it rejected the authenticity of the abortion certificate, the RAD also concluded that the sterilization notices lack features establishing they are genuine, and afforded the documents little weight. Having found that the pregnancy and abortion were not credible, the Applicant's allegation she was given sterilization notices following the abortion was also not credible; nor is her allegation she was pursued by family planning officials. Thus, the Applicant is not at risk of sterilization for having violated the one-child policy.

[22] Finally, the RAD found that the Applicant's allegation the RPD breached procedural fairness by failing to notify her of the deficiencies in her claim – in particular her failure to include an affidavit from her family concerning the abortion – lacks substance and specificity. Though it would have been preferable for the RPD to have put the issue to the Applicant in the hearing, the RAD noted the Applicant has demonstrated she is in contact with her family and has the ability to acquire documents from China. Rule 11 of the *Refugee Protection Division Rules*, SOR/2012-256, clearly states that the Applicant must provide documents, or indicate efforts made in attempting to acquire evidence to corroborate central elements of her claim. The RAD notes that the abortion is central to the Applicant's claim and the evidence the Applicant did tender in this regard was addressed by the RPD at the hearing.

[23] On the basis of its independent assessment of the evidence, the RAD concluded that there was no breach of procedural fairness that would impact the ultimate determination, as affidavits attesting to the abortion would have had little impact on the outcome of the determination.

III. Issue

A. Was the RAD's Decision reasonable?

IV. Standard of Review

[24] The Federal Court of Appeal has recently clarified in *Canada (Minister of Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at paragraph 35 [*Huruglica (FCA)*] that this Court is required to review decisions of the RAD on a standard of reasonableness.

V. Analysis

A. *Was the RAD's Decision reasonable?*

[25] The Applicant argues that the RAD Decision, namely its analysis of the authenticity of documentation, is incongruous.

[26] The Applicant submits that essentially the RAD concluded it is possible to purchase any document in China in support of its rejection of each of the Applicant's corroborating documents. However, it ignored that same country documentation evidence in finding the expired passport genuine and drawing a negative inference when the Applicant provided no documents to corroborate certain aspects of her claim, such as her inability to travel in 2009 due to medical complications. The Applicant takes the position that this "ad-hoc" cherry-picking approach to the analysis of documentation is unreasonable.

[27] At the heart of the RAD Decision is the finding the Applicant lacked credibility with respect to a number of documents and facts relating to her pregnancy, abortion and sterilization. In conducting its analysis, the RAD relied upon the decision in *Huruglica (FC)*, above. This decision has since been supplanted by *Huruglica (FCA)*, above, in which the Federal Court of Appeal determined that the RAD is to review RPD decisions on a correctness standard, carefully considering the RPD decision before carrying out its own analysis of the record to determine whether the RPD erred (*Huruglica (FCA)*, above, at paras 78, 103).

[28] Notwithstanding the RAD's citation of *Huruglica (FC)*, it is apparent the RAD properly engaged in a correctness review: it conducted an independent and thorough assessment of the RPD Decision and also considered the totality of the evidence in evaluating the Applicant's arguments.

[29] While the Applicant may disagree with the RAD's assessment of the documentary evidence, I find it committed no reviewable error in its analysis and weighing of the evidence.

[30] The RAD conducted a detailed assessment of the individual documents in evidence, and it was reasonable for it to arrive at different conclusions regarding the documents' legitimacy, given their different features.

[31] It provided transparent and justifiable reasons why the abortion certificate and the sterilization notices were rejected as not genuine. The RAD first cited the country documentation evidence, showing the prevalence and availability of fraudulent documents in China. While that certainly does not mean every document from China will be fraudulent, or that they can be presumed to be fraudulent, the RAD also noted that in addition to credibility concerns which called into question whether the abortion had even taken place, the abortion certificate and sterilization notices bore features that could be easily replicated: they were "very simple documents" generated using a word processor and did not bear the signature or name of the issuing individual or a logo or pre-printed letterhead.

[32] In assessing the Applicant's expired passport, the RAD provided cogent reasons why it considered the document to be genuine. Not only were various features of the passport supportive of that finding – such as the three different pictures of the Applicant and the six visas with accompanying stamps from the issuing countries – but it had also been previously accepted as genuine by Canadian Immigration Officials.

[33] Moreover, it is not inconsistent for the RAD to draw negative inferences from the Applicant's inability to provide certain corroborating documents that the RAD found, on a balance of probabilities, would be reasonable to expect, given her other evidence. The Applicant provided medical documentation for herself and her son, thereby demonstrating her ability to acquire such records. Yet, she provided no medical evidence that she was unable to travel in 2009 due to pregnancy complications, or that she underwent an abortion that resulted in extensive bleeding.

[34] The onus was on the Applicant to establish her claim. It was not unreasonable for the RAD to expect the Applicant to provide credible evidence corroborating the allegations that were the foundation of her fear of persecution and that lie at the heart of her refugee claim.

[35] I find no error that would justify the Court's intervention. The RAD's assessment of the evidence is intelligible, transparent, and justifiable, and the Decision it came to falls within the range of reasonable outcomes.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5273-15

STYLE OF CAUSE: JINDONG HUANG v THE MINISTER OF
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