

Federal Court



Cour fédérale

**Date: 20170209**

**Docket: IMM-3402-16**

**Citation: 2017 FC 157**

**Toronto, Ontario, February 9, 2017**

**PRESENT: The Honourable Madam Justice Simpson**

**BETWEEN:**

**JIE PING RAO  
(A.K.A. JIEPING RAO)  
JIA YI YANG  
(A.K.A. JIAYI YANG)  
WEINAN YANG  
(A.K.A. WEI NAN YANG)**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Proceeding**

[1] The Applicant has applied for judicial review of a decision [the Decision] of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board dated July 20, 2016 concluding that the Applicants were neither *Convention* refugees nor persons in need of protection. This

Application is brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

## II. Background

[2] This matter concerns a 37 year old mother, [the Applicant], her four year old son, and her sixteen year old daughter [the minor Applicants]. All are citizens of China.

[3] The Applicant alleges that she was forced to wear an intra-uterine device [IUD] after her daughter was born in 2000. This caused heavy menstruation, discomfort and pain. She alleges that authorities found out she was pregnant during an IUD checkup on April 10, 2006 and forced her to have an abortion (the Abortion) that same day. She was subsequently forced to wear a triangular IUD, which increased the pain. She alleges that between 2007 and 2008 she asked the Family Planning Office [FPO] to remove her IUD eight times. The requests were refused and she was told that the only alternative was sterilization by injection. She consented to and had this procedure, but tried to counteract its effectiveness by drinking a special tea. The injection was given in mid-October 2008.

[4] Notwithstanding the injection, the Applicant again became pregnant in January 2012 and her son was born on September 18, 2012. She left him with her aunt when he was six months old.

[5] On August 10, 2015, the FPO discovered the son. The Applicant alleges that the FPO came to her home, but she and her husband were not there. The FPO told the Applicant's mother in law that the Applicant or her husband must be sterilized within three days.

[6] The couple learned of the FPO's visit and hid at the Applicant's cousin's home. They also learned that the Applicant's aunt had been fined 5000 RMB and detained for one day. When no one appeared for sterilization, the FPO issued a 'Notice for Sterilization' [the Sterilization Notice] on August 14, 2015. The Notice imposed a fine of 60,000 RMB and required either the Applicant or her husband to present themselves for sterilization within one week. The Applicant says that she and her husband received a notice dismissing them from their employment and that her daughter was given a notice suspending her from school.

[7] The Applicant says that they found a smuggler who gave them "altered Hong Kong passports," which she and the minor Applicants used to travel to Toronto on September 20, 2015. The Applicant says that the smuggler "took ... all traces of their travels from them upon arrival."

[8] The Applicant alleges that they later learned that the FPO is still looking for them. Her husband remains in hiding with her cousin in China.

### III. The Refugee Protection Division

[9] The RPD based a global negative credibility finding on a number of inconsistencies in the Applicant's evidence about how she travelled to Hong Kong (bus or car), how much she paid her agent (\$45,000 or \$4,500) about which child (son or daughter) caused her to be fined and about

where her in-laws lived (collectively the Inconsistencies). The RPD was also concerned about the Applicant's inability to produce any travel documents. As a result, the RPD did not assess the Applicant's documentary evidence. It simply concluded that it could not be credible.

#### IV. The Refugee Appeal Division

[10] The RAD agreed with Inconsistency findings described above. However, it did not agree that the lack of travel documents was problematic and concluded that the RPD should have considered the documentary evidence.

[11] The RAD undertook a review of the documents and found as follows:

- The IUD record between January 5, 2007 and July 8, 2008 did not assist in establishing that the Applicant's pregnancy was discovered on April 10, 2006. The complete IUD checkup booklet covering the relevant date was not produced.
- The Sterilization Certificate of October 16, 2008 was not on hospital letterhead. It did not describe the Applicant's particular circumstances and was not accompanied by the mandatory medical booklet.
- The Birth Control Surgery Certificate of April 10, 2006 shows that the Applicant had an abortion in hospital on April 10, 2006. However, it was not on hospital letterhead and did not refer to the patents' circumstances. As well, such certificates were only issued on request and there was no evidence that a request had been made.
- The School Suspension Notice pre-dated the Sterilization Notice by three days.
- No evidence was provided to show that she asked FPO officials to remove her IUD 8 times and was refused.
- The Family Planning Notice of August 14, 2015 cites the FPO Policy of Guandong Province, yet that policy does not require sterilization. The RPD found this notice to be fraudulent.
- The portions of the Medical Booklet which were produced do not cover the period of the alleged Abortion.

[12] As a result of these findings and the Inconsistencies, the RAD concluded that the Abortion had not been proven and that the documents relating to sterilization and school and job loss were not reliable.

[13] The RAD also reviewed the country documents and found that, while the Applicant might face a fine on return, forced sterilization is not a serious possibility in Guandong Province. As well, she would have a choice of contraceptives. Finally, the RPD concluded that the Applicant's son, who was born without permission, will be able to attend school and receive social benefits. This conclusion was based on a recent article produced by the RAD. Counsel for the Applicant was given an opportunity to make submissions on the article but did not do so.

#### V. The Issues

[14] The Applicant takes issue with the entire Decision saying that the credibility findings and the forward looking conclusions are unreasonable.

#### VI. Credibility

[15] The record shows that the Applicant possessed her medical booklet and her IUD checkup booklet because portions of each booklet were produced. However, she did not produce the pages from either booklet that covered April 10, 2006 which was the date her pregnancy was discovered and the Abortion was performed.

[16] The only evidence of the Abortion was the Birth Control Surgery Certificate of April 10, 2006 and the RAD clearly did not accept it as a valid document because the RAD concluded that there was insufficient evidence to establish that the Abortion had occurred.

[17] The Applicant correctly submits that the RAD did not mention that a seal was on the Birth Control Surgery Certificate and says that it would have supported a finding that the certificate was genuine. However in my view, in the absence of a letterhead on the certificate and given that neither the IUD record nor the medical booklet for April 10, 2006 were produced, the RAD's Decision on this issue was reasonable even though the seal was not mentioned.

[18] I have also reviewed the balance of the credibility findings and have concluded that they are reasonable.

## VII. Future Persecution

[19] The Applicant submitted that the RAD unreasonably concluded that her only risk on her return to China was the payment of a fine.

[20] The Applicant says that she has received a Notice of Sterilization, that she has had a second child (the son) whose birth was not approved and that she will therefore be sterilized on her return. She adds that there is no evidence that the new two child policy is retroactive. The Applicant provided the RAD with an article dated April 2016 from [www.lifenews.com](http://www.lifenews.com). It states that the US State Department has reported that, through 2015 forced sterilization was still

common in China and the number of abortions increased dramatically. An unnamed source was quoted as saying that these practices will continue under the new two child policy.

[21] The RAD focussed on Guandong Province and found that the documentary evidence showed that:

- There have been no forced abortions or sterilizations in Guandong Province since 2012.
- The Guandong regulations only provide for fines and, although unspecified remedial measures are mentioned, this predates the 2012 Directive which says the brutal enforcement of family planning is banned. Guandong Province appears to be following the Directive.
- Guandong has historically applied FPO policies in a relaxed manner.
- Forced sterilization is illegal in China.

#### VIII. Conclusion

[22] In my view, the RAD's conclusion that there is not a serious possibility that the Applicant is at risk of sterilization is reasonable.

#### IX. Decision

[23] For these reasons the application will be dismissed.

#### X. Certification

[24] No questions were posed for certification for appeal.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application for judicial review is hereby dismissed.

“Sandra J. Simpson”

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Judge



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

**DOCKET:** IMM-3402-16

**STYLE OF CAUSE:** JIE PING RAO (A.K.A. JIEPING RAO) JIA YI  
YANG (A.K.A. JIAYI YANG) WEINAN YANG  
(A.K.A. WEI NAN YANG) v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 8, 2017

**JUDGMENT AND REASONS:** SIMPSON J.

**DATED:** FEBRUARY 9, 2017

**APPEARANCES:**

Stephanie Fung FOR THE APPLICANTS

Amy King FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Lewis and Associates FOR THE APPLICANTS  
Barristers and Solicitors  
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of  
Canada