

Federal Court



Cour fédérale

Date: 20170503

Docket: IMM-4323-16

Citation: 2017 FC 443

Ottawa, Ontario, May 03, 2017

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

YINGYI LIANG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, a 30 year old citizen of China, claims that the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada failed to properly assess her risks in returning to China as an unwed mother. She argues that she would be subject to discrimination in housing, medical services, and education for her child. She also argues that the RAD engaged in speculation with respect to her ability to pay a fine that will be levied against her by the family planning authorities in China.

[2] For the reasons that follow, I conclude that the RAD properly assessed the Applicant's risk based upon the evidence it had before it. The RAD reached a reasonable decision; therefore, this judicial review is dismissed.

I. The RAD Decision

[3] The RAD acknowledged that the Applicant was at risk of being fined for being an unwed mother in China. However, the RAD noted that there was inconclusive evidence as to whether children born outside China were subject to the fine. Further, as the fine is one of general application of the family planning policy in China, it would not be applied to the Applicant in a persecutory way. Therefore, the Applicant's return to China would not personally subject her to a risk to her life, or to a risk of cruel and unusual treatment or punishment.

[4] The RAD concluded that the Applicant is not a Convention refugee according to section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], nor that she is a person in need of protection under subsection 97(1) of the *IRPA*.

II. Issue

[5] The only issue raised by the Applicant in this matter is whether the RAD's finding that she will not face persecution upon her return to China, by reason of violations to the Family Planning policy, is reasonable.

III. Analysis

[6] The Applicant argues that the RAD failed to properly consider the various forms of discrimination the Applicant will face if she returns to China as an unwed mother. In addition to a fine, which may be double to that imposed on married couples, she will also face discrimination in housing, accessing medical services and accessing affordable education for her child. The Applicant argues that while the RAD acknowledges these issues (see paragraphs 46 - 48 of the RAD's Reasons and decision), it failed to fully analyze those issues and rather, speculated that the Applicant would be able to afford the fine imposed.

[7] A review of the RAD decision reveals that it considered the documentary evidence relating to unwed mothers, and children born out of wedlock. The RAD also expressly considered evidence relating to the Applicant's home province (Guangdong). Although the RAD noted that the documentary evidence was mixed, it reasonably concluded that the application of the Chinese law did not rise to the level of persecution.

[8] The RAD's findings are in keeping with previous decisions from this Court that have held that the imposition of a fine of general application is insufficient to amount to persecution. In *Li v Canada (Citizenship and Immigration)*, 2011 FC 610 the Court states:

[17] This Court has determined that the fines imposed for breaching China's family planning policy are generally not persecutory. The Respondent relies on *Lin v Canada (Minister of Employment and Immigration)*, (1993), 66 FTR 207, 24 Imm LR (2d) 208 (Fed TD), in which Justice Paul Rouleau stated at paragraph 6 that "economic sanctions, as a means to enforce compliance with the law, does [sic] not amount to persecution."

[19] [...] Although the fines levied against unwed mothers are higher than those for married couples, there is no evidence that this distinction is discriminatory, let alone persecutory. The sole basis for the Applicant's argument that the fine is persecutory appears to be the amount. However, in the absence of any evidence or argument to this effect, there is no basis for the Court to interfere with the Board's finding that the fine is not persecutory.

[9] It is not the role of the RAD to prove that the Applicant will not be persecuted. The burden is on the Applicant to establish that she would face a serious possibility of persecution should she return to China. (*Sanmugalingam v Canada (Citizenship and Immigration)*, 2016 FC 200 at para 10)

[10] Here, the Applicant failed to show that the fee for the child would be levied against her, or, if so, that the fee would be prohibitively expensive. The onus was on the Applicant to produce evidence before the RAD to corroborate her claims, and she has failed to discharge her burden of proof in that regard.

IV. Conclusion

[11] The RAD considered the evidence and was not unreasonable in denying the Applicant's claim. The RAD's decision is therefore entitled to deference on a reasonableness review.

JUDGMENT in IMM-4323-16

THIS COURT'S JUDGMENT is that:

1. The application for judicial review of the RAD decision is dismissed.
2. No serious question of general certification is certified.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4323-16

STYLE OF CAUSE: YINGYI LIANG v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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JUDGMENT AND REASONS: MCDONALD J.

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