

Federal Court



Cour fédérale

**Date: 20190412**

**Docket: IMM-4343-18**

**Citation: 2019 FC 450**

**Ottawa, Ontario, April 12, 2019**

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

**BETWEEN:**

**CHUN LIN  
LI PING ZHU**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Chun Lin and Li Ping Zhu are husband and wife, and citizens of China. They seek judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB]. The RAD dismissed their appeal and confirmed a ruling by the Refugee Protection Division [RPD] of the IRB that they are neither Convention refugees nor persons in

need of protection pursuant to ss 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] For the reasons that follow, the RAD's assessment of the Applicants' supporting documents and its denial of their *sur place* claim were both reasonable. The RAD's rejection of the Applicants' credibility was reasonably supported by the evidence. The application for judicial review is dismissed.

## II. Background

[3] Mr. Lin and Ms. Zhu claim to fear persecution due to their religious beliefs. They say they are members of the Shouters, a Christian sect that is outlawed in China. They also claim to fear persecution for violating China's family planning laws.

[4] Mr. Lin says that his first daughter was born in China on June 8, 1992. According to the United States Department of Homeland Security [DHS], Mr. Lin entered the US with his first wife and daughter on June 8, 1992. They made refugee claims on July 13, 1993. Mr. Lin claimed to fear persecution due to his political activities and China's family planning laws. His claims were rejected for lack of credibility. On June 4, 1997, a judge of the Immigration Court in New York ordered that Mr. Lin be removed to China. He was made aware of the arrangements for his departure on October 14, 1998, but failed to report for removal.

[5] Mr. Lin was living and working illegally in the US when he was convicted of conspiracy to commit robbery in 2004. He was sentenced to 63 months' incarceration, including the time he had spent in custody awaiting trial. He served his sentence and was released in late 2007 or early 2008. He was then detained for a further three months pending his removal to China. He returned to China in 2008 and married Ms. Zhu on November 8, 2010.

[6] Mr. Lin worked as a fisherman in China. He says that in late November 2012, two of his cousins, who were also fishermen, drowned and this caused him severe anguish. Mr. Lin and his wife were Buddhists, but a neighbour commented that Buddha had failed to protect Mr. Lin's cousins, and therefore could not be relied upon to protect his family. The neighbour suggested that Christianity, specifically the Shouters, could offer them better protection and eternal life. Ms. Zhu joined the Shouters on January 16, 2013. Mr. Lin joined the church three months later. They were baptized on July 21, 2013. On February 2, 2014, they had a daughter together.

[7] According to Mr. Lin and Ms. Zhu, the Chinese Public Security Bureau [PSB] raided their church on November 9, 2014. They were detained but released after paying a fine. The PSB required them to report weekly. When they reported on November 25, 2014, they were given a summons [2014 Summons]. They continued to report to the PSB until May 6, 2015.

[8] In February 2015, Mr. Lin and Ms. Zhu were introduced to a human smuggler. The smuggler provided them with travel documents and a route to Canada. They say they left China on May 12, 2015 without their daughter. However, a document provided by the DHS states that Mr. Lin was fingerprinted at an unspecified location in the US on April 14, 2015.

[9] Mr. Lin and Ms. Zhu arrived in Canada on May 21, 2015. They made refugee claims the next day. They allege that the PSB left a further summons with their family on May 20, 2015 [2015 Summons].

[10] In July 2015, Mr. Lin and Ms. Zhu amended their basis of claim forms to state that Ms. Zhu was pregnant with their second child. They said they feared coercive family planning measures if they returned to China, because the name of Mr. Lin's daughter with his first wife appeared on their household registration, or hukou, together with the name of their own daughter.

[11] The RPD heard the Applicants' claims on April 28, May 26, and July 7, 2017. The Minister of Citizenship and Immigration [Minister] intervened to argue that Mr. Lin was excluded from refugee protection under Article 1(F) of the *United Nations Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS 137 due to his criminal conviction in the US. However, the Minister subsequently abandoned this position and argued that the Applicants' claims should be rejected for lack of credibility.

[12] The RPD rejected the Applicants' claims on August 31, 2017. The RPD found the Applicants were unable to establish that they were genuine Christians, that they were sought by the Chinese authorities, or that Ms. Zhu would be subjected to forced sterilization or abortion if she returned to China. The Applicants appealed to the RAD, which dismissed their appeal on August 8, 2018.

### III. Decision under Review

[13] The Applicants challenged the RPD's decision on five grounds: (a) the RPD's assessment of their supporting documents, (b) the RPD's adverse plausibility finding regarding their travel from China to Canada, (c) the RPD's rejection of the sincerity of their religious beliefs and their *sur place* claims, (d) the RPD's finding regarding the possibility that Ms. Zhu may be subjected to forced sterilization or abortion in China, and (e) the RPD's rejection of the Applicants' credibility.

[14] The RAD agreed that the RPD had failed to properly assess the Applicants' supporting documents, and conducted its own analysis before concluding that the documents were likely fraudulent. The RAD doubted the authenticity of the 2014 Summons and the existence of the 2015 Summons.

[15] The RAD held that the inconsistencies in the Applicants' account of their travel were overwhelming, and they had attempted to obfuscate the details of their journey to Canada. The Applicants claimed to have left their home in Fuzhou on May 12, 2015, and to have travelled to Shenzhen, then to Hong Kong, then to Germany, then to Jamaica, and finally to Canada, arriving on May 21, 2015. This was inconsistent with the document from the DHS indicating that Mr. Lin had been fingerprinted in the US on April 14, 2015. The Applicants had provided no corroborating documents, such as boarding passes, itineraries or luggage tags, to confirm their route to Canada.

[16] The RAD concluded that the Applicants were not genuine practitioners of Christianity in either China or Canada, and had attended a church in Canada only to further their fraudulent refugee claims. Furthermore, the Applicants had provided no evidence that the Chinese authorities were aware of their religious practices in Canada.

[17] The RAD found that the Applicants were not at risk of persecution due to China's family planning laws. The multiple hukous provided by the Applicants were confusing and inconsistent, suggesting that the documents were not genuine. The Applicants did not supply a birth certificate for Mr. Lin's daughter from his first marriage, causing the RAD to question her existence. Ms. Zhu claimed to be pregnant during the hearing before the RPD, but there was no evidence that she had given birth at the time the RAD rendered its decision. Even if the Applicants had contravened China's family planning laws, there was no evidence that Ms. Zhu would be subjected to forced abortion or sterilization in Fujian province.

[18] These conclusions were sufficient to support an overall rejection of the Applicants' credibility. The RAD therefore dismissed the Applicants' appeal, finding they are neither refugees nor persons in need of protection.

#### IV. Issue

[19] The sole issue raised by this application for judicial review is whether the RAD's rejection of the Applicants' refugee claims was reasonable.

V. Analysis

[20] The RAD's assessment of the Applicants' refugee claims is subject to review by this Court against the standard of reasonableness. Reasonableness is a deferential standard, and is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. The Court will intervene only if the decision falls outside a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[21] The Applicants challenge the reasonableness of the RAD's decision on several grounds. In oral argument, counsel for the Applicants focused on two: (a) the RAD's assessment of the Applicants' supporting documents, and (b) the RAD's rejection of the Applicants' *sur place* claims.

[22] The Applicants say that foreign documents are presumed to be authentic and should not be rejected without valid reason (citing *Ramalingam v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 10; *Rasheed v Canada (Minister of Citizenship and Immigration)*, 2004 FC 587). They argue that the RAD failed to specify which of the four examples of authentic summonses shown in Response to Information Request CHN 104458.E [RIR] is inconsistent with the 2014 Summons. More generally, they say the RAD improperly focused on the form of the summons, rather than its substance. They note that the RIR has not been updated since 2003 (citing *Ma v Canada (Citizenship and Immigration)*, 2018 FC 163 at para 23 [*Ma*]), and assert that the general availability of fraudulent documents in China is not sufficient to

support the conclusion that a particular document is fraudulent (citing *Guo v Canada (Citizenship and Immigration)*, 2013 FC 400 at para 4).

[23] The Minister responds that the Applicants have raised nothing more than a mere possibility of error. The onus is on the Applicants to demonstrate that the RAD's decision was unreasonable, and they have failed to discharge this onus.

[24] The RAD identified the following discrepancies between the 2014 Summons and the examples shown in the RIR:

Observing the summons submitted by the Appellant and comparing it to the samples in the NDP documentation, the RAD finds that the structure and format of the summons is not consistent with the documentation. The identifier prior to the name of the individual concerned (top left) is missing. The structure of the second and third lines are inconsistent with the NDP documentation – specifically, the caricature [*sic*] before a number 30 is on the second line, not the third. The spacing for the bottom three lines of the document is inconsistent with the documentation provided in the NDP.

[25] I agree with the Minister that the Applicants must specify, with a reasonable degree of precision, the errors they say the RAD committed in its assessment of the documents. They have not done so. The RAD stated at paragraphs 20 and 23 of its decision that it considered the 2014 Summons to be a public security summons, and noted the absence of information at the bottom of the 2014 Summons that one would expect to find if the document were genuine. The “appearance” section of the 2014 Summons was blank, although the Applicants claimed to have attended the PSB's offices in person.



[26] The RIR discussed in *Ma* was included in the National Document Package [NDP] for China that was issued in 2013, but here the RAD cited the RIR included in the NDP for China dated March 31, 2017. While the RIR was unchanged, its inclusion in the 2017 NDP was a strong indication that it remained current, and it was therefore reasonable for the RAD to rely on it.

[27] The Applicants complain that the RAD failed to assess the other supporting documents independently. Having reached a conclusion regarding the 2014 Summons, the RAD then dismissed the other documents accordingly (contrary to *Chen v Canada (Citizenship and Immigration)*, 2013 FC 311 at paras 20-21 and *Ren v Canada (Citizenship and Immigration)*, 2015 FC 1402 at paras 24-25).

[28] However, the remaining supporting documents depended on the authenticity of the 2014 Summons. The RAD rejected the authenticity of the 2014 Summons, and reasoned that subsequent documents purporting to establish the Applicants' reporting to the PSB and release must similarly be false. Mr. Lin's "Attendance Form of the Person under Surveillance" was also undermined by the DHS document confirming his presence in the US the day before his recorded attendance on April 15, 2015. The 2015 Summons was never produced.

[29] With respect to the rejection of the Applicants' *sur place* claim, I am satisfied that the RAD reasonably concluded that the Applicants offered no evidence that the Chinese authorities were aware of their religious practices in Canada. In light of the RAD's conclusion that the

Applicants engaged in these religious practices only to further fraudulent refugee claims, it was reasonable to conclude they will not continue to adhere to them if they return to China.

[30] The Applicants' remaining arguments may be dealt with briefly. The RAD reasonably found that the Applicants did not establish they have violated China's family planning laws, or that they will be subjected to persecution if they return to that country. The Applicants' evidence of their journey to Canada was unclear and inconsistent. There were no corroborating documents to confirm their itinerary. Mr. Lin was fingerprinted in the US nearly one month before the Applicants claim to have left China. The RAD's rejection of the Applicants' overall credibility was reasonably supported by the evidence.

## VI. Conclusion

[31] The application for judicial review is dismissed. Neither party proposed that a question be certified for appeal.

**JUDGMENT**

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

"Simon Fothergill"

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Judge

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

**DOCKET:** IMM-4343-18

**STYLE OF CAUSE:** CHUN LIN, LI PING ZHU v THE MINISTER OF  
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