

Federal Court



Cour fédérale

**Date: 20210810**

**Docket: IMM-461-20**

**Citation: 2021 FC 827**

**Fredericton, New Brunswick, August 10, 2021**

**PRESENT: Madam Justice McDonald**

**BETWEEN:**

**YUANZHEN DAI  
JIANFU YAN  
XIANTONG YAN DAI  
XIANQI YAN DAI  
JUNYI YAN DAI  
JUNYANG YAN DAI  
JUNHUI YAN DAI**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, Yuanzhen Dai, her husband, Jianfu Yan and their five minor children seek judicial review of the Refugee Appeal Division (RAD) decision denying their refugee claims.

## **Background**

[2] The adult Applicants, Jianfu Yan and Yuanzhen Dai, are citizens of Guangdong province, China. In 2000, Mr. Yan went to Peru for work. In 2006, Ms. Dai joined him in Peru. Although the adult Applicants had temporary status in Peru, they anticipated having difficulties renewing their temporary status. The five minor applicants were born in Peru and have Peruvian citizenship.

[3] During a visit to China in 2018, the Applicants claim that their five children came to the attention of the family planning officials and two sterilization notices were issued. The Applicants allege fear of forced sterilization under the family planning policies in China if they return. They travelled to Canada via the United States with the assistance of a smuggler.

[4] Their refugee claims were denied by the Refugee Protection Division (RPD) who concluded that the female Applicant's explanations lacked credibility regarding their status in Peru, the absence of passports, and other identity documents.

## **RAD Decision**

[5] The RAD considered the Applicants' argument that the RPD failed to consider their supporting documentary evidence. The Applicants argued that the RPD's finding that the sterilization notice was a fraudulent document was speculative and not supported by the evidence.

[6] With regard to the sterilization notice, the RAD noted that the RPD did not question the Applicants about the inconsistencies in the documents at the hearing. The RAD found that “the Federal Court jurisprudence infers that the RPD and the RAD are not obligated to put an obvious inconsistency between the Appellant’s documents and the material provided in the National Documentation Package (NDP) for China to the [Applicants] for an explanation.” The RAD ultimately concluded that the Sterilization Notice was not a genuine document.

[7] The RAD noted the Guangdong regulations did not set out mandatory sterilization or abortion procedures for families that have out-of-plan pregnancies and births. The RAD also noted that Guangdong was not mentioned as a province that required “remedial measures.” Therefore, the RAD concluded that “there was no evidence in the record that Guangzhou, where the [Applicants] reside, in Guangdong province had any local regulations requiring coercive family-planning measures.” The RAD also noted that the October 2017 United Kingdom Home Office Report that states the last unlawful crackdown by local officials resulting in forcible sterilization was in 2010.

[8] The RAD noted the credibility concerns and concluded that there was not a sufficient evidentiary basis to establish the Applicants’ claim that they would be subjected to sterilization upon return to China.

[9] The RAD considered the potential fines (Social Maintenance fees) that might be imposed on the Applicants. The RAD relied on a document by the Australia Refugee Review Tribunal to conclude that “while the fee may be regarded as substantial, it is meant to pay for additional

social costs, such as education and health care. The RAD further finds that the requirement to pay a fine if a child is born out-of-plan is a law of general application. As such, it cannot be considered persecutory and a basis for a refugee claim.”

[10] The RAD considered the Applicants’ argument that the minor Applicants face a risk of child abuse in Peru if they returned without parents. The RAD noted that the Applicants’ submissions on this were “generalized” and a review of the documentary evidence indicates that there are state sponsored systems in place to protect and assist children. The RAD concluded that the Applicants did not establish that the minor Applicants would face risk if they were to return to Peru.

### **Issues**

[11] The Applicants raise three issues with the reasonableness of the RAD decision:

- a. Was the country condition evidence considered?
- b. Is the social compensation fee persecutory?
- c. Were the risks to the minors reasonably assessed?

### **Standard of Review**

[12] The applicable standard of review is reasonableness. As stated in *Vavilov v Canada (Citizenship and Immigration)* at para 99, “the reviewing court asks whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision...”

## **Analysis**

### *A. Was the country condition evidence considered?*

[13] The Applicants argue that the RAD erred in its analysis of the country condition information with respect to the implementation of family planning regulations. They argue that the RAD failed to fully consider 2017 UK Home Office Report when it concludes at paragraph 11 of the decision that female returnees do not face a real risk of forcible sterilization. The Applicants argue that the RAD's analysis is selective and not supported by the evidence.

[14] The record shows that the RAD did consider the extensive country condition evidence but concluded that the evidence did not support the Applicants' submissions that forced sterilizations take place in their home province of Guangdong. Rather, the RAD found that a social compensation fee was the penalty for violation of the family planning policy.

[15] With respect to the sterilization notice, the Applicants challenge the grounds upon which the RAD concluded that the document was not genuine. However, other than a disagreement with the RAD's assessment of the document, the Applicants pointed to no evidence to demonstrate that the RAD's assessment was unreasonable.

[16] In my view, the RAD conducted a thorough assessment of the documentary evidence regarding family planning regulations and forced sterilizations in the Applicants' province in China. The Applicants fail to acknowledge the impact of the credibility findings on their claim.

In effect, their arguments amount to a disagreement with the RAD's weighing and assessment of the country condition evidence. That is not a basis upon which this Court can intervene.

[17] The RAD cited documentary evidence extensively and reasonably concluded that the Applicants were not at risk of sterilization in their province of Guangdong. The RAD also reasonably found that the sterilization notice submitted by the Applicants was not a genuine document.

B. *Is the social compensation fee persecutory?*

[18] The Applicants argue that the RAD erred in failing to consider the persecutory effects of the social compensation fee. They rely upon the decision in *Huang v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1074 where the Court held that it was an error that the Board did not deal with the Applicants' claim that fines are persecutory if they are imposed at six times the Applicants' annual income (para 4).

[19] However, there are a number of other decisions of this Court that have concluded that a fine or "social compensation fee" for violation of China's family planning policies is not persecution within the meaning of the *Convention* see: *Chen v Canada (Minister of Citizenship and Immigration)*, 2015 FC 255 at para 26; *Wang v Canada (Minister of Citizenship and Immigration)*, 2011 FC 636 at para 27; *Huang v Canada (Minister of Citizenship and Immigration)*, 2019 FC 120 at para 18; and, *Li v Canada (Minister of Citizenship and Immigration)*, 2011 FC 610 at para 17.

[20] Ultimately, it is the specific facts of a case that are determinative of this issue. Here, the RAD clearly considered the potential of a fine, however, the Applicants failed to provide any evidence that the imposition of a social compensation fee would be persecutory in their circumstances.

[21] The consideration of this issue by the RAD was reasonable.

C. *Were the risks to the minors reasonably assessed?*

[22] The Applicants argue that the RAD erred by failing to consider the fact that the minor claimants will be parentless if returned to Peru and would therefore face risks of violence, abuse or forced labour.

[23] In support of these arguments, the Applicants claim that the educational level in Peru is inferior and that the crime rate is high. The RAD found that there was insufficient evidence to demonstrate a personalized risk of harm or persecution. The RAD did consider the documentary evidence and determined that there are state sponsored systems in Peru designed to protect and assist children.

[24] Overall, the Applicants failed to satisfy their burden of establishing risk of persecution or harm in Peru. The RAD considered the country condition evidence and concluded that the children did not have personalized risk in Peru. This was a reasonable conclusion.

**JUDGMENT IN IMM-461-20**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. There is no question of general importance for certification.

"Ann Marie McDonald"

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Judge

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

**DOCKET:** IMM-461-20

**STYLE OF CAUSE:** YUANZHEN DAI ET AL v THE  
MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** HELD VIA VIDEOCONFERENCE

**DATE OF HEARING:** MAY 4, 2021

**JUDGMENT AND REASONS:** MCDONALD J.

**DATED:** AUGUST 10, 2021

**APPEARANCES:**

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