

Federal Court



Cour fédérale

Date: 20220503

Docket: IMM-291-20

Citation: 2022 FC 642

Ottawa, Ontario, May 3, 2022

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

**YAOCHUN ZHANG
XUCHEN ZHANG (A MINOR)**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are Yaochun Zhang (“Mr. Zhang”) and his son, Xuchen Zhang (“Xuchen”), who was a minor at the time the underlying decision was made. In addition to Xuchen, Mr. Zhang has three other children — the eldest child is from a previous marriage and

did not come to Canada, and the two other children were born in Canada and share the same mother as Xuchen.

[2] The Applicants are citizens of China. They made refugee claims upon arrival in Canada on the grounds that they were at risk of persecution by the Chinese government for their violation of family planning rules. Their appeal of the Refugee Protection Division's refusal of their claim was rejected by the Refugee Appeal Division [RAD]. The RAD determined that the Applicants would only face a financial penalty in Shanghai for violating the current requirement that families only have up to two children. The Applicants are challenging the RAD's refusal in this judicial review.

[3] The RAD's finding that they would only face financial penalties was based on an unreasonable review of the evidence. Based on the reasons set out below, I find the RAD's decision to be unreasonable and grant the judicial review.

II. Factual Content

[4] Mr. Zhang married his current wife, and the mother of three of his children, in 2002. After the birth of their first child together, Mr. Zhang's wife was required to have an intrauterine device ("IUD") inserted in accordance with China's family planning policy. In 2013, the IUD became dislocated and they began using alternative forms of birth control. Mr. Zhang's wife had an appointment scheduled for December 2013 to have the IUD reinserted. Prior to this appointment, she became pregnant. Mr. Zhang and his wife did not want to abort the baby and feared repercussions from the Family Planning Office. Mr. Zhang's wife did not attend the

appointment to reinsert the IUD and hid at a relatives' home in the countryside while arrangements were being made so that she could flee to Canada.

[5] Mr. Zhang's wife travelled to Canada and made a claim for refugee protection in April 2014. Her claim was dismissed by the Refugee Protection Division [RPD] on June 2014. Her RAD appeal was dismissed shortly after in July 2014. On July 19, 2014, she gave birth to the couple's second child (Mr. Zhang's third child). Leave was denied by this Court to challenge the negative RAD decision.

[6] Mr. Zhang and his son, Xuchen, came to Canada in July 2015 and made refugee claims. Prior to their RPD hearing, Mr. Zhang and his wife had another son, born on July 11, 2017. The RPD dismissed the Applicants' claims for refugee protection on September 8, 2017. The Applicants appealed the RPD's decision to the RAD and in August 2018, the RAD dismissed the appeal. The Applicants made an application for judicial review of the RAD decision. Justice Gleeson granted this application (*Zhang v Canada (Minister of Citizenship and Immigration)*, 2019 FC 870).

[7] The matter was sent back to a different RAD member to redetermine. The RAD dismissed the appeal in December 2019.

III. Issues and Standard of Review

[8] The issues raised by Mr. Zhang go to the substance of the RAD decision and therefore are to be reviewed on a reasonableness standard. Both parties agree that the reasonableness

standard applies. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption.

[9] In *Vavilov*, the Supreme Court of Canada described the reasonableness standard as a deferential but nonetheless “robust form of review,” where the starting point of the analysis begins with the decision-maker’s reasons (at para 13). A decision-maker’s formal reasons are assessed “in light of the record and with due sensitivity to the administrative regime in which they were given” (*Vavilov* at para 103). The Court described a reasonable decision as “one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85). Administrative decision-makers, in exercising public power, must ensure that their decisions are “justified, intelligible and transparent, not in the abstract, but to the individuals subject to it” (*Vavilov* at para 95).

IV. Analysis

[10] The determinative issue for the RAD was that the Applicants had not demonstrated that they would face any penalty other than a financial one for violating the family planning rules in Shanghai. I find that the RAD’s finding rested on an unreasonable analysis and engagement with the evidence in the record.

[11] The RAD accepted that coercive birth control methods, such as forced abortions and forced sterilizations, still happen in China. The RAD noted that in some regions, local regulations provide for the continued use of these measures; the RAD gave some examples of regions with these types of regulations and noted there was no evidence that Shanghai had such regulations. The RAD, however, acknowledged that even in regions where there were no local regulations confirming the use of forced sterilizations or abortions, the practices still happen. There were no specific regions or localities referenced in the record where there were incidents of forced sterilizations and/or abortions in spite of the absence of local regulations contemplating their use. Yet, the RAD then made the leap to conclude that because there was no mention of these incidents happening in Shanghai, these coercive birth control practices do not happen in Shanghai. This is an unreasonable leap to make based on the record before the RAD.

[12] The RAD's finding that the Applicants would only face a financial penalty for their violation was also justified, in part, based on the RAD's review of the notices issued by the Family Planning Office in Shanghai when Mr. Zhang's wife did not attend her appointment for an IUD inspection. The RAD found that these notices also support the view that the authorities in Shanghai only issue financial penalties for a violation of family planning rules. I find the RAD's review of these notices to be deficient. The RAD determined that the reference to other punishments, such as "forcible measures" and "corresponding measures", was vague and therefore not significant to their conclusion that only a financial penalty applied in Shanghai. The RAD reached this determination without reference to the documentary evidence before them that noted that vague terms like "remedial measures" in government notices and documents were a euphemism for coercive birth control practices like forced abortions and sterilizations. A similar

problem was noted by this Court in *Zheng v Canada (Minister of Citizenship and Immigration)*, 2012 FC 608 at paragraphs 10-12.

[13] The application for judicial review is allowed and sent back to a new member at the RAD for redetermination. No question was raised for certification and none arises.

JUDGMENT IN IMM-291-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed and sent back to a new member at the RAD for redetermination;
2. No question was raised for certification and none arises.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-291-20

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