

Federal Court



Cour fédérale

Date: 20100921

Docket: IMM-371-10

Citation: 2010 FC 936

Toronto, Ontario, September 21, 2010

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**RUNDI YOU
ZHAO ZENG**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants, mother and child, ask this Court to set aside as unreasonable the decision of the Refugee Protection Division of the Immigration and Refugee Board that found that the applicants were neither Convention refugees nor persons in need of protection. The Board reached this decision because it found that the applicants had failed to provide sufficient evidence to establish their identities as citizens of China. The Board also found, in the alternative, that if they are citizens of China, they had not established on the balance of probabilities that they would be at risk, as alleged.

[2] Counsel for the applicants conceded that if the Board's finding that they had failed to establish their identity was upheld by this Court, then the remainder of the application was moot. I agree and I find that the decision respecting their identity was not unreasonable and cannot be set aside.

[3] The Member's finding on identity was as follows:

... [S]he may have been a citizen of China at one time, but she could now be a citizen of any number of countries around the world. She could even have been living in Canada as there is no proof when she actually came to Canada. There is no acceptable proof as to where her infant son was born.

[4] The applicants submit that the Member engaged in speculation in suggesting that the female applicant might be a citizen of any country. I disagree. What the Member was pointing out was one possibility that arises in situations where there is no proof of when an applicant arrived in Canada (there was none in this case) and no acceptable documentary evidence of citizenship (there was none that was accepted in this case).

[5] As evidence of her nationality Ms. You presented a *hukou* and a grade nine graduation certificate; she did not have a Resident Identity Card (RIC), which, in China is a mandatory government-issued card with security features. She explained that she did not have an RIC because her parents refused to give her the *hukou* required to obtain an RIC as they were unhappy that she was living with her boyfriend. She explained that she did not get one later because she was afraid she would be forced to submit to sterilization. The Board Member did not accept these explanations

because the Board Member found that “there were many credibility issues in the claimant’s testimony.”

[6] The Board Member also rejected the Notice of Birth that was submitted as evidence of the minor applicant’s birth. The Board Member concluded that it was fraudulent because (1) fraudulent documents are widely available in China; (2) the issue date on that document was November 4, 2007, whereas according to Ms. You’s testimony it should be May 2009; and (3) there were other credibility issues with the mother’s evidence. While the Member accepted that the minor was the son of Ms. You, given their close connection with each other, she rejected as fraudulent the documentary evidence offered.

[7] The Board Member’s consideration of the evidence offered of national identity cannot be said to have been unreasonable; it “falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law”: *Dunsmuir v. New Brunswick*, 2008 SCC 9. In my view, the applicants are really asking this Court to reweigh the evidence that was before the Member as to their identity and come to a different conclusion. While others may have reached a different conclusion based on that evidence, the conclusion that the Board reached cannot be said to be unreasonable, especially in circumstances where, as here, there was no evidence as to when the applicants arrived in Canada and from where.

[8] No question for certification was proposed by the parties and there is none on these facts.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application is dismissed; and
2. No question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-371-10

STYLE OF CAUSE: RUNDI YOU; ZIHAO ZENG v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 15, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** ZINN J.

DATED: September 21, 2010

APPEARANCES:

Michael Korman FOR THE APPLICANTS

Tessa Kroeker FOR THE RESPONDENT

SOLICITORS OF RECORD:

OTIS & KORMAN FOR THE APPLICANTS
Barristers and Solicitors
Toronto, Ontario

MYLES J. KIRVAN FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario