

Federal Court



Cour fédérale

Date: 20131023

Docket: IMM-10448-12

Citation: 2013 FC 1074

Toronto, Ontario, October 23, 2013

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

**WEI YAO HUANG
HUAN HAO YE**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

**REASONS FOR ORDER AND ORDER
(delivered orally on October 21, 2013)**

[1] This application is for judicial review of a decision of the Immigration and Refugee Board (the Board) dated September 17, 2012. The decision will be set aside for the following reasons:

[2] The applicants claim that they left China because they feared forced sterilization following the birth of their son and the unsanctioned removal of the wife's IUD. This claim was based largely

on documents submitted by the Applicants and was rejected by the Board due to credibility concerns.

[3] I have concluded that it is not necessary to consider those credibility concerns because the events in China which caused the Applicants to leave are not determinative of their “surplace” claim for refugee status and protection. What matters now, is whether with two children (a son born in China and a daughter recently born in Canada) the Applicants face forced sterilization on their return to Guangzhou City in Guangdong Province.

[4] I have concluded that the Board’s consideration of this issue was flawed in two important respects:

- i) It did not consider the text of the relevant family planning regulations – articles 24,25 and 49 which say that they apply to overseas Chinese and their families, that sterilization occurs after two children and that fines are a remedial measure. The law must be factored in when the Board is considering (as it did) how enforcement is actually being undertaken.
- ii) The Board did not deal with an aspect of the Applicants’ claim. They alleged that if fines are imposed at six times annual income as an alternative to sterilization, such fines are persecutory because they have a coercive impact and essentially mean that sterilization will be preferred and will occur.

Certification

[5] No question was posed for certification under section 79 of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27.

ORDER

THIS COURT ORDERS that for these reasons the Board's decision is set aside and the matter is referred back for reconsideration by a different panel only on the question of whether the Applicants face a risk of forced sterilization either directly, or indirectly by reason of heavy fines, on their return to China with their two children.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10448-12

STYLE OF CAUSE: WEI YAO HUANG, HUAN HAO YE v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 21, 2013

**REASONS FOR ORDER AND
ORDER:** SIMPSON J.

DATED: OCTOBER 23, 2013

APPEARANCES:

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