

Federal Court



Cour fédérale

Date: 20150324

Docket: IMM-8000-13

Citation: 2015 FC 369

Toronto, Ontario, March 24, 2015

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

CUIQIONG HUANG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review of a decision of the Refugee Protection Division dated November 19, 2013 wherein the Applicant's claim for refugee protection was rejected.

[2] The Applicant is an adult female person who is a citizen of the Peoples Republic of China. She married in China in 1997 and a year later, gave birth to a daughter. She was then required by the State to have an intrauterine device ("IUD") inserted. Notwithstanding the IUD,

she became pregnant in 2010; the State required her to undergo an abortion; another IUD was inserted. This as well as the former IUD caused difficulties for her; she requested that it be removed; the State refused.

[3] The Applicant fled China and arrived by air in the United States. Instead of claiming asylum there, a few days later, she was taken to the Canadian border where she entered Canada and claimed refugee protection.

[4] A Member of the Refugee Protection Division held a hearing respecting the Applicant's claim. In the decision following the hearing, the Member rejected the claim for refugee protection. Among the reasons for rejecting the claim was the Applicant's failure to seek asylum in the United States which undermined her credibility. Further, the Member was critical of the Applicant's failure to seek other contraception means rather than an IUD. Various other inconsistencies and improbabilities were cited concerning her evidence as to her abortion and medical treatment. The fact that the Applicant was free to leave China on her own passport undermined her claim that she was sought by the authorities.

[5] The Member held that, even if the Applicant became pregnant and were to return to China, she would only be subject to a social maintenance fee.

[6] Taking these matters cumulatively, the Member found that the Applicant lacks credibility and was not a person in need of protection or at risk.

[7] The issue before me is whether the determination before the Member was reasonable.

[8] The reasons of the Member are not without their flaws as pointed out in the able argument of Counsel for the Applicant. The evidence as to forced abortions in China particularly before 2012 clearly points to a multitude of forced abortions, often in graphic detail. The reference by the Member to the Golden Shield programme which guards against leaving China is directed to those with criminal records and not those suspected of contravening the one-child policy.

[9] Applicant's Counsel argues that these and other errors constitute a fatal flaw that permeates the decision leading to the Member rejecting the Applicant's claim.

[10] Respondent's Counsel, while admitting that there were errors, argues that the rejection can be maintained on a sound basis. The evidence is quite clear that the Applicant came to the United States from China but failed to make a claim for asylum there, preferring Canada because "it's easier for Canada to accept your refugee claim". Neither the Board nor the Court likes country shopping (see *Remedios v Canada (Minister of Citizenship and Immigration)*, 2003 F.C.T. 437 at paragraphs 23 and 24). Further, Counsel argues that the conclusion of the Member that the Applicant is most likely to be subject only to a family maintenance fee if she were to return to China and become pregnant, is a reasonable finding on the evidence. Lastly, the fact that the Applicant endured apparent difficulties with the IUD for about twelve years without changing to some other method of contraception undermines her claim as to difficulties in that regard.

[11] I conclude that, notwithstanding its flaws, the decision in the result is reasonable particularly on the principle issues of county shopping and lack of physical harm, if returned. It will not be set aside.

[12] No party requested certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application is dismissed;
2. No question is certified;
3. No Order as to costs.

"Roger T. Hughes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8000-13

STYLE OF CAUSE: CUIQIONG HUANG v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 23, 2015

JUDGMENT AND REASONS: HUGHES J.

DATED: MARCH 24, 2015

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