

Federal Court



Cour fédérale

Date: 20150417

Docket: IMM-8155-13

Citation: 2015 FC 486

Ottawa, Ontario, April 17, 2015

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**QI YING JIANG
HUI YI XIAO**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is the judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board of Canada [RPD/Board] wherein the Applicants were held to be neither Convention refugees nor persons in need of protection.

II. Background

[2] The Applicants, husband and wife, are citizens of China. They fled China fearing arrest for their involvement in an expropriation protest. They left behind what was then their only child.

[3] The Applicants' claim stems from an expropriation protest that turned violent. The husband received notice in September 2010 that their house would be expropriated for a new highway. The property owners protested the amount of compensation offered and when the government sent in equipment to demolish the houses, some of the protestors, including the wife, were beaten and injured.

[4] The Applicants state that on the night of the protest, the police came for them and left a summons to appear. Later, the Applicants heard that six people were detained.

[5] Knowing that the PSB [police] were looking for them, the Applicants left for Canada. They later learned that their house was demolished without compensation and the police continued to look for them.

[6] The Applicants also claim that their situation has become more complicated because they have had a son in Canada. This violates Chinese family planning laws and they therefore fear having to pay a large fine and forced sterilization upon return.

[7] The RPD, in summary, denied the claim on the following grounds:

- lack of credibility in regards to how they came to Canada, the process of expropriation and the details surrounding it;
- even if the Applicants were credible, their claim is not founded on Convention grounds; and
- there is no serious possibility that the Applicants would be forced into sterilization upon return.

III. Analysis

[8] There is no dispute that the standard of review for this decision is reasonableness (*Uygur v Canada (Citizenship and Immigration)*, 2013 FC 752).

[9] On the issue of general credibility, while the Board is entitled to a high level of deference generally, where the Board engages in plausibility findings, the Court is entitled to scrutinize those conclusions more closely.

[10] Some of the Board's findings are not well explained but one can see that by the Applicants switching parts of their story, doubts about credibility are inevitable.

[11] It is not necessary to deal substantively with the issue of the truth about each part of the Applicants' narrative. This matter can be determined on the assumption that the Applicants' narrative of events is true.

[12] The Board's finding that this claim is not founded on a Convention ground is both reasonable and correct. In *Zolfagharkhani v Canada (Minister of Employment and Immigration)* (*FCA*), [1993] 3 FC 540, 155 NR 311, the Federal Court of Appeal set forth four "general propositions relating to the status of an ordinary law of general application in determining the question of persecution".

- (1) The statutory definition of Convention refugee makes the intent (or any principal effect) of an ordinary law of general application, rather than the motivation of the claimant, relevant to the existence of persecution.
- (2) But the neutrality of an ordinary law of general application, vis-à-vis the five grounds for refugee status, must be judged objectively by Canadian tribunals and courts when required.
- (3) In such consideration, an ordinary law of general application, even in non-democratic societies, should, I believe, be given a presumption of validity and neutrality, and the onus should be on a claimant, as is generally the case in refugee cases, to show that the laws are either inherently or for some other reason persecutory.
- (4) It will not be enough for the claimant to show that a particular regime is generally oppressive but rather that the law in question is persecutory in relation to a Convention ground.

[13] The Board reasonably concluded that the Applicants had not rebutted the presumption of neutrality and validity of the Chinese expropriation law. Furthermore, the Board reasonably concluded that the Applicants had failed to provide evidence that the law would be used against them due to a perceived political dissent.

[14] There is no question that the Applicants' issue with the Chinese authorities was the amount of compensation due upon expropriation. Absent anything else, this could hardly fall

within the type of matters covered by the Convention. This finding is consistent with the decision in *You v Canada (Citizenship and Immigration)*, 2013 FC 100:

[20] The real dispute was over money not a grounds under the Convention. The monetary dispute cannot be dressed up as a political dispute just because it is against a government decision.

[21] It was not unreasonable to conclude that there was no nexus to a Convention grounds given the nature of the dispute and protest activities.

[15] As the Board concluded, the fact remains that the Applicants are sought by police for their involvement in interfering with an expropriation. A similar offence exists in Canada under s 129 of the *Criminal Code*.

[16] Therefore, the Board's conclusion as to the absence of a Convention ground must be upheld.

[17] With respect to the fear of forced sterilization, the Board concluded that on balance the Applicants would face a fine, particularly returning to their home city.

[18] There is no merit in the suggestion that the Board ignored evidence as to the realities under the "One Child Policy". Paragraph 61 of the Board's decision refers specifically to the mixed messages concerning Chinese government policy and action on this issue. However, the Board weighed off evidence from the authorities and outside sources that an enhanced fine rather than forced sterilization is the more likely penalty.

[19] This finding is well set out and is the exercise of the very function assigned to the Board. The Applicants want this Court to reweigh the evidence and come to a different conclusion. That is not the Court's function.

[20] Further, this Court (Justice Shore) in *Yu v Canada (Citizenship and Immigration)*, 2015 FC 61, held at paragraph 17:

[17] Furthermore, as evidenced by the country conditions documentation, citizens who have “unauthorized children” such as the Applicants are required to pay a monetary fine known as the “social maintenance fee”, which is determined by individual provincial governments. Relying on the jurisprudence of this Court, the RPD concludes that economic sanctions, as a means to enforce compliance with the law, do not amount to persecution (*Li*, above; *Lin v Canada (Minister of Employment and Immigration)*, (1993), 66 FTR 207 at para 6).

[21] The Board's finding on this issue is reasonable and does not merit Court intervention.

IV. Conclusion

[22] This judicial review will be dismissed. There is no question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8155-13

STYLE OF CAUSE: QI YING JIANG, HUI YI XIAO v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 9, 2015

JUDGMENT AND REASONS: PHELAN J.

DATED: APRIL 17, 2015

APPEARANCES:

Michael Korman FOR THE APPLICANTS

Alex Kam FOR THE RESPONDENT

SOLICITORS OF RECORD:

Otis & Korman FOR THE APPLICANTS
Barristers and Solicitors
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of
Canada
Toronto, Ontario