

Federal Court



Cour fédérale

Date: 20210611

Docket: IMM-877-20

Citation: 2021 FC 601

Fredericton, New Brunswick, June 11, 2021

PRESENT: Madam Justice McDonald

BETWEEN:

**JIANCAI ZHOU
ANGIE ZHOU YANG (a minor)
YUMING ZHOU YANG (a minor)**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review of a decision of the Refugee Appeal Division (RAD) involving a family of five. The adult Applicants and the eldest child are citizens of China. The other minor Applicants are citizens of Peru. In a split decision, the RAD found the adult female Applicant was a convention refugee on the basis of religious persecution and China's family planning

policy. The RAD also granted the eldest son refugee status on the basis of religious persecution. However, the RAD denied the refugee claims of the male Applicant and the two minor children.

[2] For the reasons that follow this judicial review is granted as the RAD failed to consider the risks to the male Applicant in returning to China in contravention of the family planning policy.

Background

[3] The male Applicant, Jiancai Zhou, is a citizen of China. His children, the two youngest minor Applicants are citizens of Peru. Mr. Zhou's wife is a Chinese citizen as is their eldest child, Yanming Zhou.

[4] In 2005, the male Applicant moved from China to Peru to work as a chef. In 2006, his wife and eldest son joined him in Peru. The two minor Applicants were born in Peru.

[5] In 2011, the Applicant and his wife sent the minor Applicants to China out of fear for their safety in Peru. When they attempted to register their children in China they "were told that their children would only be registered if their parents paid a fine and agreed that one of them would be sterilized."

[6] In 2017, the minor Applicants returned to Peru. Shortly thereafter, a friend of one of the minor Applicants was a victim of sexual assault in Peru. As a result, the Applicants feared for

their family in Peru, however they also feared returning to China because they would not be allowed to have more children and the female Applicant's Catholic faith prohibits the use of contraception.

[7] On arrival in Canada in 2018, the Applicant, his wife and their three children made a joint refugee claim on the basis of their fear of persecution in China due to China's Family Planning Policy. The Applicant's wife and eldest son asserted fears of religious persecution based on their Catholic faith. The minor Applicants fear returning to Peru because of crime and the violence directed towards those of Chinese ethnicity.

[8] The Refugee Protection Division denied their claims. The Applicants appealed the decision to the RAD.

RAD Decision

[9] The RAD allowed the appeals of the Applicant's wife and his eldest son based on their fear of religious persecution as Catholics, and the Applicant's wife's risk of being in violation of China's Family Planning Policy.

[10] The RAD dismissed the male Applicant's appeal on the grounds that he does not face more than a mere risk of sterilization as a man who violated the Family Planning Policy.

[11] The RAD concluded that the minor Applicants, who are citizens of Peru, lacked a nexus to a Convention ground and did not face a personalized risk of cruel and unusual punishment. The minor Applicants also did not rebut the presumption that state protection would be available to them in Peru.

Standard of Review and Issue

[12] The parties agree that the standard of review is reasonableness. As stated in *Vavilov v Canada (Minister of Citizenship and Immigration)*, 2019 SCC 65 at para 99, “A reviewing court must develop an understanding of the decision maker’s reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision.”

[13] The dispositive issue on this judicial review is the reasonableness of the RAD’s consideration of China’s Family Planning Policy in relation to the male Applicant’s circumstances.

Analysis

[14] The Applicants argue that the RAD’s finding that China’s family planning policy would not apply to the male Applicant is unreasonable as the RAD failed to consider the potential

application of the Policy to the male Applicant who, as a result of the RAD's decision to allow the female Applicant's claim, would be returning to China with his two minor children.

[15] The RAD accepted the evidence that the Guangdong Family Planning authorities told the female Applicant that if they wanted to register their children, either she or her husband must be sterilized. The RAD concluded "I find the subjective fear of the [female Applicant] is supported by the most recent country conditions evidence available in the NDP on the family planning policy in China, including Guangdong." The RAD also noted that "according to the objective evidence, in 2016, China implemented the two-child policy which is strongly enforced".

[16] The RAD referenced the 2018 US Congressional-Executive Commission on China that reported that "official speeches and government reports from Chinese provinces, including Guangdong, 'continued to promote the implementation of harsh and invasive family planning measures'." The RAD also noted that "although now less common, forced abortions and sterilizations continue to exist".

[17] With respect to the female Applicant's claim, the RAD accepted that Guangdong province strongly enforced its Two-Child Policy against women. The RAD also accepted the evidence that the Applicants were told that their children would only be registered if the parents paid a fine and agreed that one of them would be sterilized. The RAD noted the documentary evidence that a father in Yunnan province was forcibly sterilized.

[18] In determining that the male Applicant would not be at risk on returning to China, the RAD relied upon the 2018 UK Home Office Report (UK Report) which states that “male returnees do not, in general, face a real risk of forced sterilisation”.

[19] However, the RAD decision does not demonstrate that it considered the male Applicant’s particular circumstances in light of two factors. First, as a result of the RAD decision, the male Applicant would be returning to Guangdong province without his wife but with two children. Second, while the RAD accepted the evidence that Guangdong Family Planning authorities told the female Applicant that if they wanted to register their children, either she or her husband must be sterilized, the RAD does not appear to have reconsidered this factor in light of the changed family circumstances arising from its decision.

[20] Furthermore, the UK report relied upon by the RAD also states at para 2.4.14:

A person may be able to show that their particular circumstances puts them at a heightened risk of being coerced/forced into having an abortion or being sterilised and where this is the case they would be at risk of persecution of serious harm by authorities. Each case must be considered on its facts with the onus on the person to demonstrate that they would be at risk.

[21] In light of the evidence accepted by the RAD that the family had been targeted by family planning authorities, and the male Applicant’s particular circumstances in returning to China with his minor children, these factors needed to be specifically considered by the RAD. Having not done so, the RAD decision is not justified in relation to the relevant facts and therefore the decision is not reasonable.

[22] This judicial review is therefore granted. The decision of the Refugee Appeal Division is set aside and the matter is remitted for redetermination by a different panel.

JUDGMENT IN IMM-877-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted. The decision of the Refugee Appeal Division is set aside and the matter is remitted for redetermination by a different panel;
2. No question of general importance is proposed by the parties and none arises; and
3. There will be no order as to costs.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-877-20

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