Date: 20071031

Docket: IMM-1130-07

Citation: 2007 FC 1129

Ottawa, Ontario, October 31, 2007

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

QUAN WEI ZHOU, YU PING ZHOU and VICTOR ZHOU

Applicant(s)

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent(s)

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review brought by Quan Wei Zhou, Yu Ping Zhou and Victor Zhou from a negative Pre-Removal Risk Assessment (PRRA) which was concluded by reasons given on September 18, 2006.

Background

[2] The adult Applicants, Quan Wei Zhou and Yu Ping Zhou, are nationals of China. They arrived in Canada on March 28, 1996 with their dependent child, Victor Zhou. Victor was born in

Argentina on July 25, 1995 and is a citizen of that country. A second child, Louise Zhou, was born into the family on February 18, 1997. She is a Canadian citizen and is, therefore, not a party to this application.

[3] Shortly after arriving in Canada, the Applicants made a refugee claim. That claim was rejected on September 7, 1999 but the family remained in Canada and submitted a PRRA application on May 25, 2004. That risk assessment was outstanding for almost 3 years; but on March 10, 2007, the Applicants were advised that their application had been rejected. They were then scheduled for removal on March 28, 2007. That removal order was subsequently withdrawn because of difficulties encountered in obtaining travel documents for the children.

[4] The Applicants' 1996 refugee claim was based on allegations by Quan Wei Zhou that he had been persecuted in China for his pro-democratic political beliefs. The Immigration and Refugee Board (IRB) did not believe Mr. Zhou and on that basis it rejected the family's protection claim.

[5] When the family submitted its application for a PRRA, the issue of political persecution was reasserted along with a claimed risk arising from China's family planning policy. Their claim narrative stated:

> Initially, I fled China due to my participation in the pro-democracy movement, which resulted in my detention and interrogation and attempts to obtain a signed confession from myself. My refusal resulted in torture and removal to a labour camp for a sentence of one year. I believe I would be sentenced to long term imprisonment for my original participation in this pro-democracy movement and subsequent escape from the labour camp.

> Further, the punishment for violating China's Population and Family Planning Law, which took effect September 1, 2002 would be prohibitive. This program is enforced through severe penalties for those who do not comply with the "single child policy for married couples", including extortionate fines, destruction of property imprisonment and even torture.
>
> Mr. Zhou Bingli "Vice Minister of the State Family Committee warned her that from the date the build took effect", those who have an extra policy birth must face the music". It is possible under the new law, that my wife could be forced to have her fallopian tubes tied and due to a preference for males, my Canadian born daughter could be denied residence, food rations where applicable and schooling. This same could also apply to my son, born outside of China, in Argentina.

The PRRA Decision

[6] The PRRA Officer did not accept that the family faced any risk of political persecution in China and, in so finding, the Officer relied heavily on the IRB decision to that effect. This determination was in keeping with the statutory limitations imposed by section 113 of the *Immigration Refugee and Protection Act*, S.C. 2001, c.27, (IRPA) on the scope of a PRRA review and was not challenged by the Applicants.

[7] The PRRA Officer drew a number of conclusions concerning the Applicants' claims that they faced a risk of persecution because of their status as a two-child family. In determining that the Applicants would not be at risk on that basis, the Officer found:

(a) Chinese law restricts the rights of families to choose the number of children they have and the period of time between births;

(b) penalties for violating the family planning policy can be strict and can include fines and the termination of pregnancies;

(c) implementation of the policy at the local level has resulted in serious human rights abuses including forced abortions and sterilizations even though such practices are violations of the law;

(d) Chinese authorities have, in some cases, responded to situations of local abuse by arresting or firing those responsible;

(e) the documentary evidence discussing the enforcement of the family planning policy presented an uneven picture;

(f) the enforcement of the policy is not universal and, in rural areas, the one child rule is not strictly followed; and

[8] The PRRA Officer completed the review of the country condition evidence by citing with approval a United Kingdom Home Office report which noted that Chinese nationals who have "above quota" children while abroad and then return to China are generally treated more leniently than those who violate quotas while within the country.

[9] The Officer then concluded that the Applicants had failed to establish with persuasive evidence that they would face more than the mere possibility of persecution if they were to return to China.

[10] The PRRA Officer went on to consider the issue of the treatment in China of foreign-born children and specifically whether one or both of the Zhou children might face discrimination in the provision of educational and social services. The Officer found that the rights of returning Chinese nationals and their family members are protected by law and even children born in contravention of family planning rules can usually be added to the family household register by payment of a bribe. Even if the parents were required to pay for educational or medical services for one of their children, the PRRA Officer found that refugee protection would not be warranted.

Issues

[11] (a) Was the PRRA Officer's finding that the Applicants would not face more than a mere possibility of persecution (forced sterilization) made on the basis of a reviewable error?

(b) Notwithstanding the finding in *Canada (Minister of Citizenship and Immigration) v. Varga* 2006 FCA 394, 277 D.L.R. (4th) 762, did the PRRA Officer have an obligation to thoroughly consider the best interests of the children, once undertaking that exercise?

Analysis

[12] As a general statement describing the standard of review applicable to PRRA decisions, I would adopt the views of my colleague Justice Carolyn Layden-Stevenson in *Nejad v. Canada*

(MCI), 2006 FC 1444, [2006] F.C.J. No. 1810 at para 14. In this case, however, I can identify no error by the PRRA Officer and it is unnecessary to undertake a pragmatic and functional analysis.

[13] The Applicants contended that the PRRA Officer had "plenty of credible and trustworthy evidence demonstrating that persons in [their] situation" would face a serious possibility of persecution in China. While that is perhaps an arguable point, the Officer did not agree. Instead, the Officer found the evidence to be insufficient to meet the burden resting upon the Applicants. Further, it was not at all clear from the evidence that the Applicants had violated Chinese family planning rules by having two children abroad, let alone what the consequences might be had they done so.

[14] It was not unreasonable for the Officer to have concluded that, as returning nationals, the Applicants would not be subjected to sterilization or to other unlawful persecutorial practices. I agree with counsel for the Respondent that this was a pure finding of fact that is deserving of the highest level of judicial deference. It is not the function of the Court on judicial review to engage in an exercise of re-weighing evidence and, in the result, this argument is rejected.

[15] I also do not agree that the Officer was unfairly selective in the assessment of the evidence dealing with the application of Chinese family planning rules. There was ample evidence to support the Officer's finding that enforcement of these rules was uneven and that the authorities were cracking down on local officials who unlawfully coerced citizens to undergo sterilization. The evidence relied upon by the Applicants did not establish that they would "inevitably be forced to

undergo sterilization" and, instead, pointed only to the likelihood that a fine or fee would be levied in their circumstances.

[16] The Applicants argued that the family planning rules were more strictly enforced in urban areas like the one to which they would be required to return. While that may be so, the evidence also indicated that the unlawful practice of forced sterilization was mostly carried out in rural areas by overzealous local officials.

[17] The Applicants contended that the Officer erred by imposing too high a burden of proof upon them, exceeding the proper test of "reasonable chance." This argument was not advanced with much enthusiasm as can be seen from the following passage from their Memorandum of Fact and Law:

> Had it been any other case, the Applicants would quite likely not have made the foregoing submission on the test applied. However, given the amount of evidence which directly contradicts the Officer's conclusions, the Applicants are left with a strong impression that the Officer was quite likely applying a much higher threshold than that prescribed by the Federal Court of Appeal's decision in *Adjei*. *Adjei v. MEI* [1989] 2 F.C. 680 at 683 (F.C.A.)

[18] It is clear from the decision that the Officer's conclusion correctly stated the burden of proof. The earlier references in the decision to "would be targeted" and "would be subject to" seem to me to be properly confined to points of evidence and not intended to be restatements of the burden of proof.

[19] It is clear from *Varga*, above, that a PRRA is not the place to assess the interests of children affected by the deportation of their parents. The fact that this PRRA Officer appears to have embarked upon such an exercise does not give rise to an argument that the decision is vulnerable if that exercise was flawed. Were it otherwise, the matter would be required to be remitted for reconsideration on an issue falling outside of the proper scope of PRRA review, leading to the pointless result that the reconsideration would proceed without any assessment of the children's interests. Regardless, it appears that the PRRA Officer's discussion about the children was primarily and properly focused on the related risk implications and impediments facing the Applicants if they returned home with two young foreign-born children.

[20] In conclusion, I can identify no reviewable error in the PRRA Officer's decision. This application for judicial review is, therefore, dismissed. Neither party proposed a certified question and no issue of general importance arises on this record.

JUDGMENT

THIS COURT ADJUDGES that this application for judicial review is dismissed.

" R. L. Barnes "
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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