

Federal Court of Appeal



Cour d'appel fédérale

Date: 20170425

Docket: A-291-16

Citation: 2017 FCA 84

**CORAM: DAWSON J.A.
WEBB J.A.
RENNIE J.A.**

BETWEEN:

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Appellant

and

**BINGHONG QIU
GIULAN ZHU
ZHIHENG QIU**

Respondents

Heard at Toronto, Ontario, on April 25, 2017.
Judgment delivered from the Bench at Toronto, Ontario, on April 25, 2017.

REASONS FOR JUDGMENT OF THE COURT BY:

DAWSON J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on April 25, 2017).

DAWSON J.A.

[1] The Refugee Protection Division of the Immigration and Refugee Board of Canada rejected the respondents' claims for status as Convention refugees. The Refugee Protection Division was led to this conclusion as a result of its findings that:

- i. the testimony of the principal claimant was incredible;
- ii. there was no credible basis for the claim; and,
- iii. even if the claims were found to be credible, the claimants had failed to establish a nexus between the peril claimed by them and a Convention ground.

[2] For reasons cited as 2016 FC 740, the Federal Court set aside the finding that the claimants' claims had no credible basis. The Federal Court returned the matter to the Refugee Protection Division with a direction to issue an amended decision wherein the finding of no credible basis was removed. The Federal Court certified the following question:

Does the Federal Court have jurisdiction under paragraph 18.1(3)(b) of the *Federal Courts Act* to issue a direction requiring the Refugee Protection Division to remove from its decision a finding that there is no credible basis for a claim, thereby granting a right of appeal to the Refugee Appeal Division, which would otherwise be precluded by paragraph 110(2)(c) of the *Immigration and Refugee Protection Act*?

[3] In our view, the determinative issue on this appeal is whether the Federal Court properly exercised its discretion to certify the question.

[4] It is well-settled law that a question should be certified only if it is a serious question of general importance which will be dispositive of an appeal (*Canada (Minister of Citizenship and Immigration) v. Zazai*, 2004 FCA 89, 318 N.R. 365, at paragraph 11; *Varela v. Canada (Minister of Citizenship and Immigration)* 2009 FCA 145, [2010] 1 F.C.R. 129, at paragraph 28).

[5] The respondents did not challenge in the Federal Court the finding of the Refugee Protection Division that they had failed to establish a nexus between the peril claimed and a

Convention ground. The reasons of the Federal Court do not impugn the finding with respect to nexus. Indeed, the Federal Court deliberately made no finding on the issue (reasons, at paragraph 9).

[6] In this circumstance the Federal Court erred in law in certifying a question that was not dispositive of the appeal. Irrespective of the findings of credibility and no credible basis, the claims to status as Convention refugees were bound to fail as a result of the unchallenged determination that the respondents failed to establish a nexus to a Convention ground.

[7] Subsection 74(d) of the *Immigration and Refugee Protection Act*, S.C. 2001 c. 27, provides that an appeal lies to this Court from the Federal Court only where a serious question of general importance has been stated. In consequence, where there is no serious question of general importance, the condition precedent to a right of appeal has not been met and the appeal should be dismissed on that ground (*Varela*, at paragraph 43).

[8] It follows that the appeal will be dismissed.

“Eleanor R. Dawson”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-291-16

STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP
AND IMMIGRATION v.
BINGHONG QIU, GIULAN ZHU,
ZHIHENG QIU

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: APRIL 25, 2017

REASONS FOR JUDGMENT OF THE COURT BY: DAWSON J.A.
WEBB J.A.
RENNIE J.A.

DELIVERED FROM THE BENCH BY: DAWSON J.A.

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