

Federal Court



Cour fédérale

Date: 20150216

Docket: IMM-8157-13

Citation: 2015 FC 176

Ottawa, Ontario, February 16, 2015

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

**DENG, WEI MING
CHEN, DONG YANG**

Applicants

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicants seek to set aside a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board), dated November 18, 2013, which found that they were neither *Convention* refugees nor persons in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). For the reasons that follow the application is dismissed.

I. Facts

[2] The applicants, Wei Ming Deng and his wife, Dong Yang Chen, are citizens of China. Their claims were heard jointly, however only Dong Chen testified.

[3] The applicant Dong Chen graduated in 2006 from Guangzhou University with a major in Law. The male applicant was employed as a sales clerk in Guangzhou. The applicants were married on October 1, 2009 and arrived in Canada on April 3, 2011. They claimed refugee protection for political reasons on April 7, 2011.

[4] In October 2010, the municipal government sent the applicants a notice advising that they had to vacate their home before December 10, 2010 as the city required the property in order to build a greenbelt. Approximately fifty houses were affected by the order. The homeowners thought the compensation offered was unreasonable. The applicants, and others, decided to negotiate with the government.

[5] The applicant testified that the request to negotiate went unanswered, and on December 10, 2010 workers with bulldozers and trucks arrived to demolish the homes. A gathering of about 100 residents attempting to block the workers and prevent the demolition triggered the arrival of the Public Security Bureau (PSB). The PSB began to arrest the residents, and the applicants ran from the scene. They went to the home of a friend. An aunt told the applicants that the PSB came to her home looking for the couple, accusing them of illegal assembly, destroying social order and interfering with government officials.

[6] The applicants hired a snakehead who arranged their travel to Canada on fraudulent Hong Kong passports.

II. Decision

[7] The Board concluded that the real dispute at issue between the applicants and the municipal government was over the amount of compensation, and therefore it was not a recognized ground of persecution under the *Convention*. The claim was not based on the government's action in expropriating the land, and there was no evidence to suggest that a *Convention* ground motivated or underlied the government's action to expropriate. The Board held that there was no nexus to a *Convention* ground. It therefore relied on *You v Canada (Citizenship and Immigration)*, 2013 FC 100 for the proposition that monetary disputes cannot be characterized as political disputes simply because a government decision underlies the controversy. Consequently, the claim pursuant to section 96 of *IRPA* failed. The Board then analyzed the section 97 claim.

[8] The Board concluded that the applicants did not adduce credible evidence. Specifically, the female applicant's testimony as to how she and her husband escaped the protest scene was vague and lacked specificity; her testimony regarding the arrival of the PSB and arrests of the protesters was evasive, unspecific and at times contradictory to her Personal Information Form (PIF), and her testimony regarding how the applicants managed to evade the PSB was vague. The Board found her evidence that the applicants continued to have direct contact with their family members while in hiding, despite the fact that the PSB was allegedly searching for them at family members' homes, not credible.

[9] Finally, the Board explained that even if the applicants were considered credible, and the applicants were being sought by the PSB, their jeopardy should be classified as prosecution under a law of general application, not persecution.

III. Analysis

[10] The Minister did not seek to uphold the decision based on the absence of a nexus to a *Convention* ground; hence, the sole issue in this judicial review application is whether the credibility findings of the Board can be sustained.

[11] The applicant contends that the Board's credibility assessment was microscopic, at times speculative and made without regard for the evidence. The Board took issue with the female applicant's vague answers and lack of specificity, stating that because this was a traumatic event for the applicants they should have a vivid memory of the event. However, the Board was not an expert in respect of memory processes, and although some people might be able to testify with great specificity, others may not remember traumatic events. Further, the female applicant explained inconsistencies in her PIF, noting that there must have been a problem with the translation. Comments by the Board regarding the visits by the PSB to the homes of family members were also speculative. The applicants admittedly took a risk in visiting family members; but the Board held that this risk was unreasonable given the female applicant's evidence as to the ongoing pursuit by the PSB.

[12] In my view, the Board's credibility findings were reasonable. The Board's credibility findings are drawn from the evidence on the record. The Board made negative inferences

regarding the female applicant's ability to recall specific facts, and although the applicant argues this is possible because the applicant lost memory because of the trauma of the event, no evidence of this was led. The onus is on the applicant to establish the facts underlying her claim. The Board member, in the ordinary course of fact finding, is entitled to draw inferences from the absence of precision or particularity in circumstances where it is reasonable to expect precision or particularity. While counsel contends that the events around the demonstration were fluid and confused, I do not find the degree of recollection expected of the applicant by the Board to be unreasonable.

[13] The Board considered the applicant's explanation regarding the inconsistencies between her PIF narrative and evidence, and noted that the applicant signed a declaration certifying the contents of the narrative to be complete and correct. While, the applicant amended the PIF prior to the hearing, she did not correct the particular statements in question until the hearing. The Board found the explanation for the discrepancy on a material point of evidence un-compelling, and there is no basis to interfere with that finding.

[14] The applicant also failed to provide a satisfactory explanation as to how the applicants' family members could have visited the applicants while in hiding at the same time the PSB continued to visit the home of their closest relative, an aunt. The Board noted that despite ten visits by the PSB to the aunt's home, no notice or summons was left. The Board found that the applicants were not being pursued by the PSB, a conclusion that was open to it.

[15] I accept the applicant's argument that each individual deviation or inconsistency in her evidence may have not been significant or determinative. Viewed cumulatively, however, the Board member had an objective foundation in the record to conclude that "...the applicant was not recollecting events that they (sic) had personally experienced." The Board identified a number of areas of concern, including how the applicant managed to escape arrest at the demonstration; her description of where the PSB arrived at the scene and the number of officers present and whether she saw the PSB make arrests or was told that they had afterwards. In sum, the Board fairly and reasonably assessed the claimants' evidence and rejected it. There is no basis for intervention.

JUDGMENT

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

There is no question for certification.

"Donald J. Rennie"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8157-13

STYLE OF CAUSE: WEI MING DENG ET AL. V MINISTER OF
CITIZENSHIP AND IMMIGRATION

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APPEARANCES:

Mr. Matthew Oh FOR THE APPLICANTS

Mr. Manuel Mendelzon FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lewis & Associates FOR THE APPLICANTS
Barristers and Solicitors
Toronto, Ontario

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