Federal Court  Cour fédérale

Date: 20151021

Docket: IMM-712-15

Citation: 2015 FC 1193

Ottawa, Ontario, October 21, 2015

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

XIAO YAN LIU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Ms. Liu is a young Chinese widow and the mother of a little boy. She claims she ran afoul of the Family Planning Office and fears that if she were returned to China she would again be forced to use an intrauterine device (IUD) or perhaps even be sterilized.

[2] The Member of the Immigration and Refugee Board of Canada who heard her case believed scarcely a word of what she had to say, so much so that she held the claim did not have

a credible basis. As a result, Ms. Liu lost her right of appeal to the Refugee Protection Division thereof and so came to this Court by way of judicial review (*Immigration and Refugee Protection Act*, sections 107(2) and 110(2)(c)).

[3] According to Ms. Liu, who lived in Guangdong Province, she gave birth to a son in 2007. Two months afterwards, she was required to wear an IUD for birth control purposes as under Chinese law she was only allowed to have one child. The IUD caused her considerable health problems. Unfortunately, her husband died the following year.

[4] After a number of requests, finally the Family Planning Office allowed her permission to have the IUD removed, but she was still required to submit to pregnancy tests every four months.

[5] In 2012, she met her current common law husband, who also had a son. They moved in together and practiced safe sex. However, when the FPO learned of the relationship she was again forced to have an IUD inserted.

[6] Again, she encountered health problems and was diagnosed as suffering from chronic pelvic inflammation. However, the FPO would not allow her to have the IUD removed.

[7] Then in June 2014, she went for her routine IUD check-up and was found, to her great surprise, to be pregnant. She was forced to have an abortion and was told she would have a different type of IUD inserted 40 days thereafter.

[8] She did not want another IUD inserted and so went into hiding. She learned that the FPO was looking for her. As she and her spouse did not have enough money for them to leave the country together, she left with the aid of a snakehead, with the expectation that her spouse would follow her when he could afford it. Ideally, one day, they would have a child together.

[9] Since coming to Canada she has learned that the FPO continues to look for her.

I. The Decision under Review

[10] The Member noted that Ms. Liu's testimony "evolved" as different questions were put to her. She was found not to be a credible witness. She did not establish that she had violated China's one-child policy and that she was wanted by the authorities. She failed to provide her common-law spouse's address in her immigration application despite the fact that she lived there for nearly two years. She was extremely vague as to the whereabouts of her son who, apparently, went to live with his paternal grandparents. She left China on her own passport, which contradicts the allegation that she was wanted by the authorities. The member did not believe that a snakehead was involved.

[11] The evidence that she underwent an abortion is extremely flimsy and likely forged. There is certainly no evidence that the abortion was forced. A review of the transcript also shows that the member had her doubts that Ms. Liu had a son and a boyfriend. Certainly, if she did not have to pay a snakehead, there would have been enough money for him to accompany her to Canada.

[12] Although it is noted that some family planning offices are quite aggressive, forced abortion is illegal in China. The likely penalty for violating the one-child policy is a fine, not forced sterilization.

II. Ms. Liu's Submissions

[13] The finding of a lack of credibility in some respects is not challenged; such as the whereabouts of her son and where she lived. However, there was no specific finding, as there should have been, that she was opposed to having an IUD inserted. Such a violation of her body against her will constitutes persecution (*Ye v Canada (Minister of Citizenship and Immigration)*, 2013 FC 634 and authorities cited therein). The member was required either to find that she was not credible on that issue or to make a more detailed analysis considering that her story was consistent with many set out in the country conditions.

[14] Both jurisprudence and common sense conclude that the violation of a woman's reproductive and physical integrity, such as by means of forced abortion or the forced insertion of an IUD constitutes persecution and that the victim of such acts is a member of a particular social class under section 96 of IRPA and is entitled to Canada's protection.

[15] However, it was not unreasonable for the member to conclude that Ms. Liu was not in violation of the one-child policy and did not undergo an abortion, much less an abortion against her will.

[16] It is not enough that there is a law on the books. There must be a serious risk that a person will be persecuted for violating that odious law. It was not unreasonable for the member to find that Ms. Liu was not persecuted in China.

[17] As the risk of persecution is forward looking, her claim, at least in part, is *sur place*.

[18] The member was so taken with Ms. Liu's other lack of credibility that she was entitled to dismiss the claim in its entirety, including the *sur place* portion thereof. It was not necessary for her to specifically deal with the *sur place* portion (*Sanaei v Canada (Minister of Citizenship and Immigration)*, 2014 FC 402). Furthermore, as Mr. Justice Beaudry noted in *Rahaman v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1008, at paragraph 17:

> …If the credibility of the applicant is so severely eroded that the Board does not believe that the applicant has a well founded fear of persecution, there is no need to look at whether the country conditions can support his claim.

JUDGMENT

FOR REASONS GIVEN;

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no serious question of general importance to certify.

"Sean Harrington"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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