

Federal Court



Cour fédérale

**Date: 20161220**

**Docket: IMM-1050-16**

**Citation: 2016 FC 1393**

**Fredericton, New Brunswick, December 20, 2016**

**PRESENT: The Honourable Mr. Justice Bell**

**BETWEEN:**

**JIELING CAO  
JIANRONG YE  
WEIHONG YE (A MINOR)  
(A.K.A. WEI HONG YE)**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] This is an application for judicial review of a February 17, 2016 decision by the Refugee Appeal Division of the Immigration and Refugee Board [RAD]. In this decision, the panel found that the Applicants were neither Convention refugees nor persons in need of protection as

contemplated by sections 96 and 97 of the *Immigration and Refugee Protection Act* [IRPA], SC 2001, c 27.

[2] Jieling Cao [Ms. Cao], her spouse Jianrong Ye and their minor son Weihong Ye are all citizens of Guyana. The adult Applicants were born in China and immigrated to Guyana in 1994. They are naturalized Guyanese citizens. Their son acquired his Guyanese citizenship at birth.

[3] The adult Applicants were small business owners in Berbice, Guyana who operated a Chinese restaurant. Between August 2007 and June 2014, the Applicants were robbed at gunpoint by unknown perpetrators on three occasions. In addition, in December 2010, they were victims of a break-and-enter into their restaurant and home, located above the restaurant. Fortunately, they were not home during this incident.

[4] The Applicants, who were considered credible by the Refugee Protection Division, thoroughly described the incidents and their interaction with police in their Basis of Claim form. In August 2007, two native Guyanese men entered their restaurant with a handgun. They pointed the gun at the Applicants, hit one of them in the head, and proceeded to steal items from the restaurant. The Applicants reported the matter to the police; however, during follow-up meetings, the police demanded a “small cash payment” and told them that “Chinese people always brought trouble”. Ms. Cao testified that, following the December 2010 break-and-enter, they visited the police three times, only to be told that they (the police) would begin investigating “tomorrow”. In August 2013, four native Guyanese men arrived in a van and parked outside the restaurant. Three entered the restaurant with guns, tied the Applicants’ hands, and proceeded to

steal money, food, and other valuables. The Applicants reported the matter to the police, but were told that “Chinese people always bring a lot of trouble”. Finally, in June 2014, the Applicants were robbed by three native Guyanese men. Once again, the Applicants reported the matter to the police, and once again, the police blamed “Chinese families for bringing a lot of trouble”.

[5] The Applicants sold their business in February 2015 and made their way to Canada in August 2015, seeking protection from Chinese-targeted violence and a lack of state protection. For the reasons herein, I would allow the application for judicial review.

## II. Impugned Decision

### A. *RPD’s Decision*

[6] The RPD began its analysis by stating that it believed all the allegations made by the Applicants. Credibility was not an issue. The RPD analyzed the criminal activity to which the Applicants were subjected and found there was no nexus to a Convention ground. It concluded that on a balance of probabilities the unknown agents of persecution were not motivated by the victims’ race but by money. The RPD further found that the Applicants were not subjected to a personalized risk because the incidents were random acts perpetrated by common criminals. The panel therefore found that the Applicants were not persons in need of protection.

B. *RAD's Decision*

[7] After conducting an independent analysis of the evidence, the RAD found that the criminality did not specifically target the Applicants or persons of Chinese ethnicity. While the RAD accepted there were crimes committed against Chinese businesses and business-owners, it found that criminality in Guyana is too widespread and prevalent to conclude the Applicants were targeted on the grounds of their race. Having found that the Applicants faced a generalized risk of victimization due to an elevated crime rate in Guyana, the RAD also agreed with the RPD that the Applicants' claims under section 97 must fail.

III. Issues and Standard of Review

[8] Only one issue needs be addressed in order to dispose of this application; that being, the reasonableness of the RAD's decision regarding the lack of a nexus between the Applicants' fear of persecution and a Convention ground.

[9] This Court may only intervene if the decision fails to demonstrate justification, transparency and intelligibility and falls outside the range of possible, acceptable outcomes which are defensible in respect of the facts and the law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190.

IV. Analysis

[10] The Applicants contend they fall within the scope of section 96 and are Convention refugees for two reasons: first, they are victims of crime which is targeted at persons of Chinese ethnicity in Guyana; second, the Guyanese police were complicit in their persecution.

[11] The Applicants rely on *Fi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1125, [2006] FCJ no 1401 [*Fi*], which addresses the issue of refugee claims in the context of widespread violence:

Therefore, a refugee claim that arises in a context of widespread violence in a given country must meet the same conditions as any other claim. ...Unlike section 97, there is no requirement under section 96 of IRPA that the applicant show that his fear of persecution is “personalized”, if he can otherwise demonstrate that it is “felt by a group with which he is associated, or even, by all citizens on account of a risk of persecution based on one of the reasons stated in the definition”.

[My emphasis.]

[12] While I am not prepared to conclude there is evidence of widespread violence in Guyana, there is certainly evidence of widespread criminality. In my view, the approach in *Fi* is appropriate in the present context.

[13] During oral submissions, counsel for the Respondent stated that this is not a case about state protection. I agree; however, only to the extent that neither the RPD, nor the RAD actually conducted such an analysis. As explained below, the RAD appears to have conflated state protection and the concept of persecution based upon race.

[14] In its analysis, the RAD concluded the police were not motivated by racism. It stated:

[...] after being given ample opportunity, the Appellant had very little to say which would suggest racism on the part of the police. In the alternative, if one were to find that at least one comment from police had racial undertones, the RAD reminds the Appellants that such would be a local failure by police.

[15] I find such a conclusion to be unreasonable in light of the Applicants' testimony and their statements found in the Basis of Claim Form, all of which were deemed credible. In addition, with regards to the second sentence of the above passage, the RAD states that "local failures to provide effective policing do not amount to a lack of state protection, unless they are part of a broader pattern of state inability or refusal to provide protection". It cites *Zhuravlyev v. Canada (Minister of Citizenship and Immigration)*, [2000] FCJ no 507, [2000] 4 FCR 3. With respect, the RAD misses the point. This case is not about "local failures" to provide effective policing; rather, it is about an allegation of racially motivated crime and local police misconduct motivated by racism. Guyana is a multi-party democratic country with a constitution not unlike Canada's, see *Constitution of the Co-Operative Republic of Guyana Act*, LRO 1/2012. Police - local and national - are required to uphold the rule of law and not create "soft targets" for criminals because of systemic racism.

[16] The RAD recognizes that foreigners who are "soft targets" may create a nexus to a Convention ground. It states:

If the criminals were robbing the Appellants simply because the Appellants, as foreigners were "soft targets" and no one else was being robbed, then the RAD may find that the criminal acts were specifically targeted for a Convention ground. The violent crime statistics prove that this is not the case either.

[17] The RPD and the RAD never addressed the issue of whether the Applicants became “soft targets” because of police racism against persons of Chinese ethnicity, a question which was clearly raised in the Basis of Claim form. The role of the police, if any, in establishing a nexus to a Convention ground, required assessment. Instead of conducting such an analysis, the RAD relied upon a state protection argument to dismiss the appeal.

V. Conclusion

[18] For the above reasons, I find the decision to be unreasonable in that it lacks justification, transparency and intelligibility (see *Dunsmuir*, above, at para 47). The application for judicial review is allowed without costs and the matter is remitted to a differently-constituted panel of the RAD for redetermination.

**JUDGMENT**

**THIS COURT’S JUDGMENT is that** the application for judicial review is allowed, the RAD’s decision is set aside and the matter is remitted to a differently-constituted panel of the RAD for redetermination. No question is certified for consideration by the Federal Court of Appeal.

“B. Richard Bell”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1050-16

**STYLE OF CAUSE:** JIELING CAO, JIANRONG YE, WEIHONG YE (A MINOR) (A.K.A. WEI HONG YE) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 19, 2016

**JUDGMENT AND REASONS:** BELL J.

**DATED:** DECEMBER 20, 2016

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