

Federal Court



Cour fédérale

Date: 20170116

Docket: IMM-2446-16

Citation: 2017 FC 52

Ottawa, Ontario, January 16, 2017

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

**MIJIAN CAO
XUYAN PENG**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mijian Cao [the Principal Applicant], and her son Xuyan Peng [the Son], have applied for judicial review of a decision of the Refugee Appeal Division [RAD] dated May 16, 2016 [the Decision]. The Decision confirmed the Refugee Protection Division [RPD] decision that the applicants are neither Convention refugees nor persons in need of protection. This application is made pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the *IRPA*].

[2] The Principal Applicant and her Son lived in Guangdong province in China. The Principal Applicant was born in 1970 and had eleven years of formal education. She graduated from teachers college and worked as a sales manager and sales person for at least ten years. She also had considerable international travel experience, having visited Japan and Australia in 2007, and Europe in 2008.

[3] The Principal Applicant married her husband in 2000. She gave birth to her Son on June 14, 2001. The Principal Applicant alleges that after the Son's birth, Family Planning Office [FPO] officials required her to wear an intrauterine device [IUD]. It caused her a number of health problems over the years. She made multiple unsuccessful requests for permission to remove the IUD.

[4] In March of 2014, the Principal Applicant was found to be pregnant.

[5] FPO officials took her to the hospital and required her to undergo an abortion. The Principal Applicant was also forced to wear a different IUD beginning in May 2014. Once again, it resulted in ongoing health issues so, in December 2014, she had a private doctor remove her IUD.

[6] In May 2015, the Principal Applicant became pregnant for the second time. She and her husband went into hiding with their Son. They found a smuggler who arranged for US visas. On July 28, 2015, an FPO official came to their home as the Principal Applicant had missed her July 27, 2015 checkup. The official told her mother-in-law that the Principal Applicant was required

to come to the office within three days. When she failed to appear, an FPO official returned on August 2, 2015. He left a notice indicating that the FPO believed the Principal Applicant was pregnant and that she must submit to an abortion and that either she or her husband would be sterilized. A second notice from the FPO listed goods that had been confiscated from the Principal Applicant's home as punishment. These two notices will be referred to collectively as the FPO Notices.

[7] The Applicant and her husband were informed that they were dismissed from their jobs.

[8] On August 22, 2015, the Applicant and her Son left China with a smuggler. They travelled to the United States [the US], and after four days, crossed illegally into British Columbia. They then travelled to Toronto where they made their refugee claim.

[9] The Principal Applicant's husband remained hiding in China.

I. The Negative RPD Decision

[10] The RPD found that the Principal Applicant's failure to claim asylum in the US, amounted to asylum shopping, and undermined her subjective fear. She explained that her internet research had shown that the US deported pregnant asylum seekers, and that her smuggler had expressed the same concern. However, she was unable to show the RPD the websites which had provided her with that information.

[11] The RPD concluded that Guangdong province would impose a social compensation fee [the Fee], but would not require a forced abortion or a sterilization. The RPD also found that the Principal Applicant's newborn son would be integrated into China's educational and medical systems once the Fee was paid. Finally, the RPD determined that the FPO Notices were fraudulent.

II. The Negative RAD Decision

[12] The RAD noted that the Applicant's IUD Booklet showed that she was not pregnant at her IUD check-up on March 11, 2014. Yet, her evidence was that she had a forced abortion in mid-March, 2014. Further, there were no hospital records which recorded an admission for an abortion. The RAD therefore concluded that she had not experienced a forced abortion.

[13] The RAD also found that the Applicant had submitted fraudulent documents because although both FPO Notices allegedly came from the same office, they had different letterheads and stamps.

[14] The RAD relied on the most recent information to conclude that in Guangdong Province, policies requiring abortion and forced sterilization have not been enforced since 2012.

[15] Finally, the RAD agreed with the RPD that a negative reference could be drawn from the Principal Applicant's failure to claim in the US.

III. The Issues

[16] The Applicant raised numerous issues, but in my view, only the following could have been dispositive:

1. Was the negative credibility finding reasonable?
2. Did the RAD err in its assessment of the likelihood that the Applicant faced a risk of forced abortion or sterilization in Guangdong Province?
3. Did the RAD unreasonably conclude that the Applicant should have claimed Refugee Protection in the US?

IV. Discussion and Conclusions

[17] In my view, the RAD's conclusion that the Applicant was not credible based on her IUD Booklet was reasonable. It is obvious that she could not have had a forced abortion in mid-March 2014, as alleged. As well, the finding that, at least in Guangdong Province, she was not at risk was also reasonable because it was based on current information about practices in that province.

[18] It is also my view that because she is educated and well-travelled, and because she was unable to show the RAD the basis for her decision not to claim in the US, it was reasonable to draw a negative reference about her subjective fear.

V. Certification

[19] No questions were posed for certification for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for Judicial Review is hereby dismissed.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: MIJIAN CAO, XUYAN PENG v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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