

Federal Court



Cour fédérale

**Date: 20170412**

**Docket: IMM-4754-16**

**Citation: 2017 FC 359**

**Ottawa, Ontario, April 12, 2017**

**PRESENT: The Honourable Madam Justice Simpson**

**BETWEEN:**

**QIONGHUAN ZHOU  
JINGQU CAO  
ZIYE CAO (MINOR)**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Proceeding

[1] The Applicants have applied for judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board dated October 19, 2016 [the Decision] which concludes that they are neither *Convention* refugees nor persons in need of protection. This application is brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

II. The Facts

[2] The Applicants are married citizens of China who claim that they have been targeted by the Family Planning Office because they breached China's family planning law. Their five year old son is also an Applicant and a Chinese citizen.

[3] The Wife says that she was diagnosed with Pelvic Inflammatory Disease after a forced abortion on March 2, 2015. She was told that she would be required to wear an IUD if her symptoms subsided. Otherwise, she or her Husband would be sterilized. Given the Wife's fear of IUD insertion, both parents' fear of forced sterilization and their desire to have more children, the Applicants fled to Canada via the USA. After their departure a notice of sterilization was left at their home.

[4] Smugglers helped the family obtain US visas in China using false documents. They also assisted with their travel to Toronto via the USA.

[5] The Applicants say that a friend of the Husband sent documents from China to support their claim, which the RPD heard on September 25, 2015 and June 29, 2016. On the first hearing date, the Member indicated her concern that the ink on the stamps on all the documents was "wet and smearing" and transferring to other documents. She therefore concluded that the documents were fraudulent and on October 19, 2016 she rejected the Applicants' claim as manifestly unfounded.

[6] The Member felt comfortable with her conclusion that the documents were fraudulent because the Applicants had already used fraudulent documents in China to obtain US visas, and because the Wife's testimony was vague about when they received the documents and had them translated even though those events occurred sometime in the two weeks before the first hearing date.

### III. Issue

[7] The determinative issue is whether the RPD's description of the "wet ink" problem was so overstated that it can be said to be unreasonable and therefore not a proper basis for a finding of fraud and a conclusion that the refugee claim was manifestly unfounded.

[8] The documents in the Certified Tribunal Record [CTR] did not show any displacement of ink. They showed clean stamps and clean pages. In view of the RPD's vivid description of extensive smeared ink, it became apparent to the Court that the documents in the CTR were not the originals. The Court Registry was unable to obtain the originals from the IRB as they had been returned to the Applicants at the request of the Member, who during the hearing said "we will be returning those to you as the decision is rendered." The Registry then approached Counsel for the Applicants to see if his clients still had the originals. With the help of an interpreter, the Applicants' Counsel promptly obtained and provided the originals of the documents and they have been made part of the Certified Tribunal Record by my order dated April 6, 2017 (the Original Documents).

[9] The Original Documents are as follows:

1. An Abortion Surgery Certificate dated March 2, 2015.
2. A Notice of Family Planning Measure dated March 3, 2015.
3. A Diagnosis Certificate dated March 9, 2015.
4. A Family Planning Services Certificate, (Blue Booklet), last entry, April 10, 2015.
5. A Medical Book – entries stamped: March 2, 2015.  
March 9, 2015.  
April 10, 2015.  
May 7, 2015.  
June 8, 2015.
6. A Notice of Sterilization dated July 7, 2015.
7. A Notice of Fine dated July 23, 2015.

#### IV. Discussion

[10] The Record includes the following statements about the wet ink: I have added the emphasis.

[11] The Member wrote in the Decision that “the stamps from each document had transferred from one document to another.”

[12] Regarding the medical book, the Member said:

...both the front and back covers of this book are covered in red ink smears, the back of the book has a very evident transfer of a stamp from one of the other documents.

[13] She also wrote that:

I ran my finger across each and every stamp on these documents and found that each stamp, regardless of the agency who affixed the stamp or the date it was affixed, was still wet and smearing across the page onto other documents.

[14] The Member found the wet stamps “highly irregular and unusual” and concluded that the documents “were all stamped and stacked together very recently, hence the transferring of one stamp to another document.”

[15] At the hearing, the Member said:

...a lot of the ink from your stamps were coming off on my hands...And, I mean, it's on my fingertips.

...we have a stamp here from a medical booklet that is from March that's smearing.

...I really have to take my thumb and go...a good, hard...[smear]

[16] In oral submissions before the RPD, the Applicants' counsel argued that “...it was kind of hard rubbing that was required in order to smear the...red in[k] on the hospital documents.”

[17] In my view, the Decision raises the following questions:

1. Have the stamps on every document transferred to other documents?

2. Is there a stamp from another Original Document found on the back cover of the Medical Booklet?
3. Are the front/back covers of the Medical Booklet “covered” in red ink smears?
4. Does the stamp on every document show that it smeared across the page onto other documents?

[18] A Review of the Original Documents discloses the following answers to the questions posed above. I will deal with them in turn:

Question 1. This statement is not accurate. No stamps have transferred to or from other Original Documents.

Question 2. Regarding question 2. Only one stamp appears to have transferred from some other document. It appears on the back cover of the Medical Booklet. It is so faint its source cannot be determined. It is not clear that it came from another Original Document.

Question 3. Regarding question 3. The covers of the Medical Booklet are not “covered” in red ink “smears”. There are a few small red ink marks on the front cover and one on the back cover. None of the marks are “smears” and they do not “cover” the booklet. In fact, at first glance they are barely apparent.

Question 4. Regarding question 4. There are no smudges caused by the Member's finger on document 4. However, the Member was able to displace very small amounts of ink on the stamps on documents 1, 2, 3, 6 and 7. As well, 2 of the 5 stamps in the Medical Booklet smudged slightly. In each case when she pressed down hard she was able to cause very small amounts of ink on the seals/stamps to move at some points a distance of 1/4" to 1/2". The smears/smudges were so faint that they did not show when xeroxed. There was no document on which ink "smeared across the page" and "onto other documents."

V. Conclusion

[19] I had expected my examination of the Original Documents to show that they were covered in long heavy smears of wet ink and that all the seals had transferred between the Original Documents. However, that was not the case. In my view, the Decision is unreasonable because it substantially overstates the ink problem. The Decision is therefore set aside and the matter is referred back for reconsideration by a different member of the RPD.

VI. Certification

[20] No question was posed for certification for appeal.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the decision is set aside and the matter is referred back for reconsideration by a different member of the RPD.

"Sandra J. Simpson"

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Judge



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

**DOCKET:** IMM-4754-16

**STYLE OF CAUSE:** QIONGHUAN ZHOU, JINGQU CAO, ZIYE CAO  
(MINOR)V THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 6, 2017

**JUDGMENT AND REASONS:** SIMPSON J.

**DATED:** APRIL 12, 2017

**APPEARANCES:**

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