

Federal Court



Cour fédérale

**Date: 20170510**

**Docket: IMM-4212-16**

**Citation: 2017 FC 486**

**Ottawa, Ontario, May 10, 2017**

**PRESENT: The Honourable Madam Justice McDonald**

**BETWEEN:**

**ZHUOHUI MAI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, Mr. Mai, is a citizen of China, who claimed refugee protection in Canada based upon his fear of being sterilized by the Chinese state authorities in relation to the country's family planning policies. The Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada [IRB] found that he failed to satisfy the burden of establishing that there is a serious possibility of persecution on a Convention ground, or that, on a balance of probabilities,

he would be personally subjected to a risk to his life, a risk of torture or a risk of cruel and unusual treatment or punishment.

[2] For the reasons that follow, I conclude that the decision of the RAD is reasonable and therefore, this judicial review is dismissed.

### I. Background

[3] The Applicant and his wife have two children: a daughter born in 1997 and a second daughter born in 2002. They were allowed to have two children as the family is registered on a rural *hukou*, which permits an exception to the usual one-child policy.

[4] After the birth of their second daughter, the Applicant's wife had an intrauterine device [IUD] inserted. She also had regular pregnancy and IUD check-ups. Eventually, the IUD was removed for medical reasons, but the regular pregnancy check-ups continued.

[5] In 2010, it was discovered during a check-up that the Applicant's wife was pregnant. She was forced to undergo an abortion and to pay a fine. She was also required to wear another IUD and to submit to regular IUD and pregnancy check-ups.

[6] In October 2015, during another check-up, the Applicant's wife was discovered to be pregnant once again. She was forced to undergo another abortion and pay a second fine. Due to complications caused by the abortion, she was not sterilized. The Applicant and his wife then became subject to a sterilization order.

[7] According to the Applicant, they went into hiding on October 10, 2015, because they were required to report for sterilization on October 20, 2015. By October 20, 2015, family planning officials began to search for them and expelled their daughters from school.

[8] The Applicant obtained a United States [US] travel visa on December 16, 2015. He applied for a Canadian visa on January 15, 2016, left China on February 12, 2016, and made a claim for refugee protection upon arrival in Canada. According to the Applicant, his wife remains in hiding in China.

[9] On May 16, 2016, a hearing was held before the Refugee Protection Division [RPD] of the IRB. The RPD refused the Applicant's claim for refugee protection, on the grounds of lack of credibility and subjective fear.

[10] On September 7, 2016, the RAD confirmed the RPD's decision and dismissed the appeal pursuant to subsection 111(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

## II. The RAD Decision

[11] The RAD addressed the Applicant's four month delay in leaving China, as well as the one month delay between obtaining the US and the Canadian visas. The RAD disagreed with the RPD that the one month delay between obtaining a US visa and applying for a Canadian visa was determinative in establishing a lack of subjective fear; rather, the RAD found that the fact the Applicant waited four (4) months, from the time he went into hiding until his departure, was significant, given the fear of the consequences he alleged.

[12] The RAD also considered the RPD's finding with respect to the Applicant's explanation for not bringing his wife with him to Canada. The Applicant testified that it would have taken twenty (20) days for his wife to apply for a passport. The RPD found an absence of meaningful answer or a reasonable explanation as to why he did not obtain a passport on behalf of his wife during the four month period prior to his departure from China. The RAD concurred with the RPD that the Applicant's lack of explanation for his wife not coming to Canada seriously undermined the material allegations of his claim.

[13] In considering the matter on appeal, the RAD did not find that the RPD erred in its credibility findings regarding the Applicant. It found that the Applicant's credibility as to the reason he was leaving China, i.e. forced sterilization, was questionable due to the lack of explanation provided by the Applicant.

[14] The RAD further noted that as of January 1, 2016, a two-child policy became law in China, and that this constituted one more factor in considering the risk to the Applicant. Given the fact the Applicant's wife had been given permission to have two children and that the new law states that requests for additional children will be granted in certain instances, the RAD found it was less likely that a third child would result in the payment of a penalty. If it did, nonetheless, the penalty would not be sufficiently severe to constitute persecution.

[15] Further, the RAD found there was insufficient credible evidence to establish that the Applicant would face persecutory treatment from the family planning authorities, should he return to his home province of Guangdong. The RAD found that documentary evidence

submitted regarding the situation in Guangdong did not support the Applicant's subjective fear of persecution. The RAD therefore concluded that, on a balance of probabilities, the Applicant is not at risk of forced sterilization by the family planning officials upon his return to China.

### III. Issue

[16] The central issue for consideration in this case is whether the RAD's decision is reasonable with respect to the negative credibility findings and with respect to the risk of forced sterilization.

### IV. Standard of Review

[17] Decisions of the RAD that involve questions of mixed fact and law are reviewed on the reasonableness standard (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 [Huruglica] at para 35).

[18] Likewise, the assessment of evidence and determinations of credibility are also reviewed on the reasonableness standard (*Jin v Canada (Citizenship and Immigration)*, 2012 FC 595 at para 4).

[19] This Court will only intervene if the decision falls outside the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

V. Analysis

A. *Credibility*

[20] The Applicant argues that the RAD erred in its assessment of evidence. Specifically, the Applicant points to the RAD's statement that he "was allegedly in hiding, yet he was able to attend for two interviews with respect to his US visa". The Applicant contends that the RAD wrongfully equates the Applicant's ability to attend at a US governmental institution with the Applicant's wife's ability to attend a People's Republic of China governmental institution, thus inferring that she could have come out of hiding to obtain a passport.

[21] However, upon review of the decision in its full context, it is clear that the RAD drew a negative credibility inference regarding the Applicant's wife not obtaining a passport, since the Applicant himself testified that he did not obtain a passport namely because it would take approximately twenty (20) days. No further explanation or evidence was provided by the Applicant as to why he left China without his wife.

[22] The RPD and RAD decisions are based on general findings of credibility. Findings of fact and determinations of credibility fall within the core of the expertise of the RPD, and by reason of the RPD's specialized knowledge and experience, determinations of credibility are entitled to considerable deference (*Khakimov v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 18 at para 23).

[23] Based upon the evidence before it, the RAD conducted an independent assessment of the facts and confirmed the RPD's rejection of the Applicant's credibility. It is not the role of this Court to reweigh the evidence and to substitute its conclusions for those of the RAD. Whether or not this Court agrees with the RAD's findings and inferences, as long as the decision is reasonable, no interference by this Court is warranted.

[24] I conclude that the RAD decision regarding the Applicant's credibility is reasonable. The RAD conducted an independent assessment of the evidence and appropriately deferred to the credibility determinations made by the RPD.

B. *Sterilization Risk*

[25] The Applicant argues that the RAD erred by finding that the new two-child policy in China would address his concerns. The Applicant states that the implementation of this policy does not correct his situation, because it does not permit couples, even rural couples, to have a third child. Since the Applicant and his wife already have two children, nothing has changed in terms of the family planning officials seeking the Applicant for sterilization. The Applicant claims that the documentation before the RAD showed how government officials use heavy handed tactics to ensure its policies are carried out (e.g. abortions, sterilizations, and even sometimes imprisonment).

[26] It was reasonable for the RAD to determine that there was a strong likelihood that the Applicant would not be found in contravention of the law, especially given the fact the Applicant

and his wife had been given permission to have two children in the past when the law was a one child policy.

[27] Finally, it was reasonable for the RAD to find that any potential “penalty” would only amount to a fine, rather than persecution, as the documentary evidence submitted specific to the province of Guangdong (where the Applicant’s family resides) showed that there is a comprehensive social maintenance fee system which is applied to out of plan births.

[28] The RAD’s findings are consistent with previous decisions from this Court that have held that the imposition of a fine of general application is insufficient to amount to persecution. In *Li v Canada (Citizenship and Immigration)*, 2011 FC 610 the Court states:

[17] This Court has determined that the fines imposed for breaching China’s family planning policy are generally not persecutory. The Respondent relies on *Lin v Canada (Minister of Employment and Immigration)*, (1993), 66 FTR 207, 24 Imm LR (2d) 208 (Fed TD), in which Justice Paul Rouleau stated at paragraph 6 that “economic sanctions, as a means to enforce compliance with the law, does [sic] not amount to persecution.”

[19] [...] Although the fines levied against unwed mothers are higher than those for married couples, there is no evidence that this distinction is discriminatory, let alone persecutory. The sole basis for the Applicant’s argument that the fine is persecutory appears to be the amount. However, in the absence of any evidence or argument to this effect, there is no basis for the Court to interfere with the Board’s finding that the fine is not persecutory.

[29] It is not the role of the RAD to prove that the Applicant will not be persecuted. The burden is on the Applicant to establish that he would face a serious possibility of persecution should he return to China (*Sanmugalingam v Canada (Citizenship and Immigration)*, 2016 FC 200 at para 10).



[30] Overall, after conducting an independent assessment of the record, the RAD found that the Applicant had failed to satisfy his burden of establishing that there is a serious possibility of persecution on a Convention ground, or that, on a balance of probabilities, he would be personally subjected to a risk to his life, a risk of torture, or a risk of cruel and unusual treatment or punishment.

[31] This is a reasonable conclusion and is entitled to deference.

## VI. Conclusion

[32] Accordingly, this application for judicial review is dismissed.

**JUDGMENT in IMM-4212-16**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review of the RAD decision is dismissed.
2. No serious question of general certification is certified.

"Ann Marie McDonald"

---

Judge

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

**DOCKET:** IMM-4212-16

**STYLE OF CAUSE:** ZHUOHUI MAI v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 23, 2017

**JUDGMENT AND REASONS:** MCDONALD J.

**DATED:** MAY 10, 2017

**APPEARANCES:**

Diane B. Coulthard

FOR THE APPLICANT

Christopher Crighton

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Levine Associates  
Barristers and Solicitors  
Toronto, Ontario

FOR THE APPLICANT

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

FOR THE RESPONDENT