

Federal Court



Cour fédérale

Date: 20171006

Docket: IMM-948-17

Citation: 2017 FC 885

Ottawa, Ontario, October 6, 2017

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

**HUIQIONG SHEN
YILIN CAO (A MINOR)
ZIYANG CAO (A MINOR)
ANLIN CAO (A MINOR)**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada denying the applicants' refugee claim.

[2] The impugned decision found that the principal applicant was not credible and that a number of the documents on which the applicants relied were fraudulent. The applicants'

memorandum of fact and law challenges only the RPD's conclusion that the birth certificates of the principal applicant's three children were fraudulent. The applicant notes (correctly) that this conclusion is essential to the integrity of the RPD's decision as a whole. If the birth certificates are viewed as being fraudulent, then other documents provided by the applicants may likewise be viewed as fraudulent. On the other hand, if the conclusion that the birth certificates are fraudulent is flawed, then conclusions concerning the weight to be given to other documents are likewise flawed. In that event, the decisions must be set aside.

[3] At the hearing, the applicants' counsel raised a number of additional arguments concerning findings and conclusions in the RPD's decision that had not been mentioned in their memorandum of fact and law. The respondent objects to these additional arguments on the basis that it is improper to raise arguments at a hearing that have not been addressed in written argument. Otherwise, the respondent is taken by surprise and faced with arguments to which it has no opportunity to prepare an adequate response. I agree with the respondent. In the absence of any justification by the applicants for not having raised these arguments in writing, I have not considered these additional arguments. Accordingly, I limit my analysis to the RPD's conclusion that the children's birth certificates were fraudulent.

[4] The applicants argue that there are many reasons that the RPD's conclusion that the birth certificates are fraudulent was unreasonable. In response to those arguments, I observe the following:

1. The RPD relied upon reports of forensic examinations of the birth certificates from the Canada Border Services Agency (CBSA).

2. These reports concluded that the certificates were “probably counterfeit”.
3. The RPD accepted these conclusions of “probably counterfeit”.
4. The RPD found it unnecessary to repeat the deficiencies identified in the CBSA reports.
5. The deficiencies identified in the CBSA reports included the following:
 - a. The watermark in the wrong design for the year of issuance.
 - b. The watermark printed and visible with ambient and ultraviolet light.
 - c. The serial number printed with inkjet.
 - d. The low quality of ultraviolet security features.
6. The RPD indicated that it trusted that the CBSA reports were based on adequate reference materials.
7. The RPD agreed that the deficiencies identified by the CBSA justified its conclusions.

[5] In my view, it was reasonable for the RPD to rely on the CBSA reports and to reach the conclusions it did concerning the birth certificates. The conclusions in those reports are reasonably justified and the RPD is well-placed to determine the weight to be given to them. I do not accept the applicants’ argument that all of the reference material cited in the CBSA reports should have been produced.

[6] Moreover, I reject the applicants’ argument that the RPD misstated the evidence by characterizing the birth certificates as fraudulent as opposed to “probably counterfeit”. By my reading of the RPD’s decision, the RPD saw no substantial difference between these terms. This was reasonable.

[7] The applicants also argue that the RPD failed to properly recognize that, even without the birth certificates, DNA testing established that the principal applicant was the children's mother. I disagree. The RPD explicitly acknowledged the DNA evidence and accepted that the principal applicant is the children's mother. However, the RPD also noted (correctly) that this fact was insufficient to establish their refugee claim. The children's birthplace being China was essential to the applicants' narrative that the principal applicant was sought by authorities in China.

[8] For the foregoing reasons, the present application should be dismissed. The parties are agreed that there is no serious question of general importance to certify.

JUDGMENT in IMM-948-17

THIS COURT'S JUDGMENT is that:

1. The present application for judicial review is dismissed.
2. No serious question of general importance is certified.

“George R. Locke”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-948-17

STYLE OF CAUSE: HUIQIONG SHEN, YILIN CAO (A MINOR), ZIYANG CAO (A MINOR), ANLIN CAO (A MINOR) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 21, 2017

JUDGMENT AND REASONS: LOCKE J.

DATED: OCTOBER 6, 2017

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