

Federal Court



Cour fédérale

Date: 20171201

Docket: IMM-2460-17

Citation: 2017 FC 1090

Ottawa, Ontario, December 1, 2017

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**XIAOSHAN HUANG
JIHANG LIU
SIMIN LIU
SIQI LIU
JUNZHAO LIU**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This judicial review deals with a claim that one of the Applicants, Ms. Huang, would be forced by Chinese authorities to wear an intrauterine device [IUD] because she had a fourth child. In the decision at issue, the Refugee Appeal Division [RAD] upheld a denial of refugee protection.

[2] The Applicants are a married couple with three children who were born in China; a fourth child was born in Canada, and is the subject of a *sur place* claim.

[3] The Applicants based their claim on a fear that because they had a fourth child, the wife would be forced to wear an IUD and/or one of the Applicants would be subject to forced sterilization if they returned to China.

[4] The Applicants contend that the RAD, and before it the Refugee Protection Division [RPD], failed to perform a forward-looking analysis of the threat posed by having a fourth child.

[5] I find that this judicial review must be dismissed because:

- the Applicants, who bear the burden of proof, submitted no evidence suggesting that a family with a fourth child was at any greater risk than families who had a second or a third.
- the RAD and RPD had referred to the evidence that people with a second or third child in Guangdong province had paid fines but had not been required to wear an IUD or subject to sterilization. In the absence of any evidence to the contrary, the RAD expected that those with a fourth child would likely be required to pay a fine.

[6] The RAD performed the necessary analysis and it was reasonable to conclude that past practice was likely to continue now that the Applicants had four children.

[7] An applicant cannot just raise an issue or a concern and expect the RAD to find evidence that the fear claimed would likely occur. The RAD has no obligation to do the applicant's work of looking for such evidence for them.

[8] Therefore, this judicial review will be dismissed. There is no question for certification.

JUDGMENT in IMM-2460-17

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2460-17

STYLE OF CAUSE: XIAOSHAN HUANG, JIHANG LIU, SIMIN LIU, SIQI LIU, JUNZHAO LIU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 29, 2017

JUDGMENT AND REASONS: PHELAN J.

DATED: DECEMBER 1, 2017

APPEARANCES:

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