

Federal Court



Cour fédérale

Date: 20180403

Docket: IMM-4007-17

Citation: 2018 FC 358

Ottawa, Ontario, April 3, 2018

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

YONG LI AND LINA RONG

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review pursuant to section 72(1) of the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA] of a negative Pre-Removal Risk Assessment [PRRA] decision [the Decision] by a PRRA Officer [the Officer], made on July 28, 2017, finding that the Applicants are not Convention refugees nor persons in need of protection in the meaning of sections 96 and 97 of the IRPA because they would not be at risk due to having breached the Chinese Family Planning Policy [Policy] with three “out of plan” children.

[2] The RPD had considered and rejected the Applicants' arguments, which were substantially the same as presented to the Officer. The RPD found that the evidence of the Applicants did not support their claim for refugee protection because of serious credibility concerns. These included the Applicants' deliberate attempt to mislead the RPD with fraudulent documents, numerous inconsistencies, implausibilities and outright lies.

[3] Most significantly, the RPD rejected the Applicants' claim that they had two other children in China. The RPD also considered the Applicants' sur place claim based on the female Applicant's pregnancy, which it rejected, concluding the Applicants would be subject only to fines. This Court has found in most cases that fines do not constitute a sufficient risk to merit protection. The Applicants sought leave to appeal the RPD decision, which was not granted by the Court.

[4] The Applicants presented additional evidence in support of their application. The Officer found little new evidence regarding the previously made allegations.

[5] The Officer stressed that his Decision was made independently of the RPD findings, but with the caveat that the determinations of the RPD must be given considerable weight with respect to its credibility and risk findings, when relating to the same issues.

[6] The Officer concluded that there was insufficient evidence to establish that the Applicants have two children in China. It also found that the multiple country reports regarding

China often predated the 2015 decision of the RPD, and that there was little to demonstrate that the country condition documents were not available to present to the RPD member.

[7] In assessing the Applicants' sur place risk, the RPD had found that the birth of the child in Canada was a breach of the Policy. However, the PRRA Officer, after examining the new country condition reports provided, accepted that the female applicant (and possibly the male applicant depending on if he is named on the Canadian birth certificate which was not entered into evidence) would likely be subject to a fine to register their child in China, but nonetheless concluded that the Applicants had submitted insufficient evidence to show that there is a serious possibility that they would be at risk of persecution in China.

[8] In this proceeding, the narrow issue described by the Applicants was whether the fines accepted as a generalized risk, would nevertheless amount to persecution. In particular, the Applicants contended that the "social compensation fee" under the Policy could result in the denial of legal documents such as birth documents and the hukou resident permit, and that the fines could be exorbitant depending upon the individual's locality. Evidence was led that the fines normally were greater than the average annual income, and referred to them being on occasion as nearly 10 times the average annual income.

[9] The Applicants contend that whether the standard of review is one of correctness (the RPD failing to even consider the sur place claim) or reasonableness (a consideration of the RPD's analysis of the sur place claim), as per *Hou v Canada (Citizenship and Immigration)*, 2012 FC 993 at para 11, in either case, the Decision should be set aside.

[10] The Court disagrees. The Applicants provided no evidence either with respect to how the Policy would be applied to them based upon their locality, or the financial means at their disposal to pay any fine that might be assessed. In the result, it was not possible to determine whether the Policy, as applied to the Applicants, would be persecutory.

[11] In addition, the Immigration and Refugee Board of Canada documentation addressed by the Officer and both parties concerning the treatment of children born contrary to the Policy, refers to a briefing note from the Federal Office for Migration and Refugees of Germany indicating that changes in Policy announced in 2015 would permit unregistered citizens to receive hukou documents allowing for school attendance by children, and unrestricted access to social services including medical care. There was some issue as to this being implemented, but the amendment points to a forward-looking attenuation of the harshness of the Policy.

[12] The Applicants also failed to provide evidence that specifically considered the application of the fines payable as a result of a single child being born in circumstances of a common-law relationship outside of China, and whether they would be reduced or eliminated by the Applicants marrying.

[13] In the circumstances, the Court finds that the Applicants have not discharged their onus to demonstrate that the Officer's decision was unreasonable as not being within the range of possible acceptable outcomes which are defensible in respect of the facts and law, nor sufficiently justified, transparent and intelligible by the reasons provided to reject the application. No serious question was proposed for certification.

JUDGMENT in IMM-4007-17

THIS COURT'S JUDGMENT is that:

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

"Peter Annis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4007-17

STYLE OF CAUSE: YONG LI AND LINA RONG V THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO

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JUDGMENT AND REASONS: ANNIS J.

DATED: APRIL 3, 2018

APPEARANCES:

Dov Maierovitz FOR THE APPLICANTS

Kevin Doyle FOR THE RESPONDENT

SOLICITORS OF RECORD:

Dov Maierovitz FOR THE APPLICANTS
Barrister and Solicitor
Toronto, ON

Attorney General of Canada FOR THE RESPONDENT