

Federal Court



Cour fédérale

Date: 20190412

Docket: IMM-4367-18

Citation: 2019 FC 449

Ottawa, Ontario, April 12, 2019

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

**XUEGUI HAN
YANGUO SUN
CHUANHAO SUN**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Xuegui Han, Yanguo Sun and their son, Chuanhao Sun, seek judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB]. The RAD confirmed a decision of the Refugee Protection Division [RPD] of the IRB that the Applicants

are neither Convention refugees nor persons in need of protection under ss 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] The RAD rendered its decision without the benefit of the Applicants' written submissions respecting a Response to Information Request [RIR] recently issued to the IRB. However, I am not persuaded that this had a material effect on the RAD's conclusions. Viewed in its entirety, the decision was procedurally fair and reasonable. The application for judicial review is dismissed.

II. Background

[3] The Applicants are citizens of China. They claim to fear persecution due to China's family planning laws. The adult Applicants say they will be forcibly sterilized if they return to China. Ms. Han says she may be forced to wear an intrauterine device [IUD]. The minor Applicant fears the loss of educational and other rights because of his parents' breach of family planning laws.

[4] The adult Applicants married on May 26, 1997. They say that their first daughter, Huiying Sun, was born on August 12, 1998. Ms. Han alleges that she was then required to wear an IUD in accordance with family planning laws. She experienced medical difficulties, and the IUD was removed. She was then required to take birth control pills.

[5] Ms. Han stopped taking the birth control pills. She says that in July 2004, she discovered she was pregnant. She went into hiding. When she missed a regular check-up, the adult Applicants were fined 2,000 Yuan. Their son Chuanhao was born on March 2, 2005, and his parents were required to pay an additional 20,000 Yuan before he could be included on their household register, or hukou. Because she could not wear an IUD, Ms. Han was made to attend regular pregnancy check-ups.

[6] The Applicants claim that in April 2013, Ms. Han again discovered she was pregnant, and again went into hiding. The Chinese authorities imposed a fine of 4,000 Yuan. Jiayung Sun, the family's third child and second daughter, was born on December 8, 2013. The parents were required to pay a fine of 50,000 Yuan before Jiayung could be included in the family's hukou. The Applicants say they could not afford to pay the fine, and were unable to register Jiayung on the hukou. Three months following the birth of Jiayung, Ms. Han was forced to wear an IUD and attend regular pregnancy check-ups. She again experienced medical difficulties, and the IUD was removed on December 26, 2014.

[7] In early September 2015, the Applicants applied for visas to visit the United States of America for a holiday. However, they say that a regular check-up on September 28, 2015 revealed Ms. Han to be pregnant yet again. She was immediately forced to have an abortion. The adult Applicants were then issued a notice requiring one of them to undergo sterilization within three months [Sterilization Notice].

[8] The Applicants again went into hiding. They engaged the services of a smuggler to help them obtain Canadian visas. Mr. Sun left China and arrived in Canada on February 16, 2016. Ms. Han and Chuanhao arrived in Canada on April 1, 2016. The Applicants say they left their two daughters in China with Mr. Sun's parents.

[9] The Applicants' refugee claims were rejected by the RPD on September 30, 2016. They appealed to the RAD, which dismissed their appeal on February 6, 2017. The Applicants then applied for leave and judicial review. The matter was remitted to the RAD for reconsideration on consent. A new panel of the RAD dismissed the appeal on July 30, 2018.

III. Decision under Review

[10] The RAD rejected the authenticity of the Sterilization Notice and the documents submitted by the Applicants to prove the existence of their two daughters. These included a hukou that listed the elder daughter as a member of the Applicants' household, and the birth certificates of both daughters.

[11] In its analysis of the birth certificates, the RAD relied on a newly-issued RIR dated January 26, 2018 (RIR CHN106035.E). The RIR described the security features one would expect to find on genuine Chinese birth certificates. The RIR consisted of a translated excerpt from a press release issued by the Fujian Provincial Ministry of Health, the Fujian Provincial Ministry of Public Security, and the Fujian Provincial Ministry of Justice. The RAD disclosed

the RIR to the Applicants and the Minister on June 7, 2018, and invited the parties to make submissions by June 15, 2018. The RAD did not receive submissions from any of the parties.

[12] The RAD identified several inconsistencies between the daughters' birth certificates and the information contained in the RIR. Chinese birth certificates include the resident identity card [RIC] numbers of both parents. According to the RIR, these numbers increased from 15 to 18 digits in 2000. The RAD noted that the RIC numbers appearing on Huiying's birth certificate comprised 18 digits, although her birth was alleged to precede this change. Chinese birth certificates also contain a birth number. As of 2000, this began with an English letter to indicate the year of birth, *i.e.*, 2000 was indicated by "A", 2001 by "B", *etc.* Huiying's birth number began with an "L", although her birth was alleged to precede the introduction of this feature. In addition, several formatting changes were made to Chinese birth certificates in 1999. These changes were present in Huiying's birth certificate, although her birth was alleged to precede them. Jiayung's birth certificate was dated December 8, 2013, and was largely consistent with the RIR. However, her birth number began with the letter "H", while birth certificates issued in 2013 have birth numbers beginning with the letter "N".

[13] The RAD declined to give the birth certificates any evidentiary weight, and concluded that they were fraudulent documents submitted to further fraudulent refugee claims. The RAD noted that fraudulent documents may impugn the validity of interrelated documents (citing *Uddin v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 451), and may affect credibility findings generally (citing *Gochez v Canada (Minister of Citizenship and Immigration)*, unreported, September 7, 2000, Court File No IMM-3545-99).

[14] The RAD also considered the hukou the Applicants submitted in support of their claims. While Huiyang's name appeared on the hukou, the RAD concluded that this was insufficient to establish the existence of the two daughters. The RAD based this conclusion on its general credibility findings, the hukou's lack of security features, the fact that fraudulent hukous are readily available in China (citing RIR CHN104579.E), and the absence of Jiayung's name from the hukou.

[15] The RAD also rejected the authenticity of the Sterilization Notice. It found that Chinese family planning authorities were unlikely to issue a written notice requiring forced sterilization, because this is illegal under Chinese law. It also noted that Ms. Han's allegation that she was forced to have an abortion was not supported by a written order.

[16] The RAD found, based on country condition reports, that the Applicants would not be subjected to forced sterilizations or abortions if they returned to China. The RAD noted that coercive family planning measures are imposed primarily in rural areas, female returnees do not generally face forced sterilization or abortion, and there was no evidence that the Applicants would be subjected to these measures in their home province of Shandong. Combined with the general availability of fraudulent documents in China, the RAD concluded that the Sterilization Notice was likely fraudulent.

[17] The RAD also found that the adult Applicants would not be subjected to family planning sanctions in China because of its adoption of a new two-child policy. Since the Applicants could

only establish that they have one child, it would be possible for them to have another child if they returned to China.

IV. Issues

[18] This application for judicial review raises the following issues:

A. Was the RAD's decision procedurally fair?

B. Was the RAD's decision reasonable?

V. Analysis

A. *Was the RAD's decision procedurally fair?*

[19] Procedural fairness is a matter for the Court to determine. The standard for determining whether the decision-maker complied with the duty of procedural fairness is correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 34, citing *Mission Institution v. Khela*, 2014 SCC 24 at para 79). The ultimate question is whether the Applicants knew the case to meet, and had a full and fair chance to respond.

[20] The Applicants say that the RAD's invitation to make submissions regarding the RIR provided a return address that was incorrect. They sent the original birth certificates for their two

daughters to this address, together with brief written submissions in which they asserted that the birth certificates conformed to the RIR. The Applicants also suggested that the birth certificates could be exposed to ultraviolet light to confirm their security features.

[21] The Applicants were subsequently contacted by a representative of the RAD, who enquired whether they intended to make submissions regarding the RIR. The ensuing conversation revealed that the RAD had provided the wrong return address. The Applicants' counsel attempted to retrieve the submissions from the address to which they had been sent, but without success. The Applicants say that the original birth certificates for the two daughters are lost and are no longer available.

[22] The RAD rendered its decision without the benefit of the Applicants' submissions respecting the RIR and the daughters' original birth certificates. The Applicants say this amounts to a breach of procedural fairness.

[23] The Minister responds that the Applicants' submissions could not have changed the RAD's decision. The Applicants did not question the applicability of the RIR to their circumstances (as they do now), and said instead that the birth certificates were consistent with the RIR. The Minister argues that the inconsistencies between the birth certificates and the RIR were apparent on the face of the copies that were before the decision-maker, and examination of the original documents by ultraviolet light would not have cured the blatant defects.

[24] A court may withhold relief when a procedural error is purely technical and occasions no substantial wrong or miscarriage of justice (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43). A breach of procedural fairness may be overlooked if it is beyond doubt that it had no material effect on the decision (*Nagulesan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1382 at para 17).

[25] I am satisfied that the RAD's failure to consider the Applicants' submissions respecting the RIR had no material effect on its decision. The Applicants maintained that the birth certificates conformed to the RIR. The RAD proceeded on the assumption that the Applicants had submitted copies of the birth certificates as reliable documents, but concluded they were not. If the RAD had been provided with the original documents and exposed them to ultraviolet light, and assuming this confirmed the presence of security features, this would not have been sufficient to outweigh the many defects that were enumerated in the RAD's decision.

B. *Was the RAD's decision reasonable?*

[26] The RAD's assessment of questions of fact or mixed fact and law are subject to review by this Court against the standard of reasonableness. Reasonableness is a deferential standard, and is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. The Court will intervene only if the decision falls outside a 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).

[27] The Applicants challenge the RAD's assessments of the daughters' birth certificates, and its conclusion that they will not face persecution in China for violating family planning laws. These issues are closely related.

[28] The Applicants did not question the applicability of the RIR in the proceedings before the RAD. Before this Court, they assert that the RAD's reliance on the RIR was unreasonable, because it describes birth certificates in the province of Fujian. The daughters were allegedly born in Shandong. The Applicants also criticize the RAD for failing to acknowledge the security features that were visible on the copies of the daughters' birth certificates, such as the official seal of the Ministry of Health of the People's Republic of China, the seals of hospitals, and traces of watermarks.

[29] The Minister defends the RAD's reliance on the RIR. Although the document describing Chinese birth certificates originated in Fujian province, the Applicants have adduced no evidence that it does not apply equally to birth certificates issued in Shandong. The Minister notes that the Applicants have previously taken the position that all three birth certificates "comply with the description of Chinese birth certificates found in CHN106035.E."

[30] I conclude that it was reasonable for the RAD to rely on the RIR to assess the authenticity of the birth certificates, even though they were allegedly issued in Shandong rather than Fujian. The Applicants have provided no evidence that the format of birth certificates differs between different Chinese provinces. The birth certificates tendered on behalf of the Applicants largely conformed to those contained in the RIR, but with small and telling differences. The RAD

provided a transparent and intelligible explanation of these differences in its reasons for rejecting the certificates. Furthermore, Chuanhao's birth certificate, which was issued in Shandong province, was accepted as genuine by the RPD and RAD, and did conform to the RIR. His birth number begins with the letter "F", which is the correct letter for 2005, his year of birth.

[31] Having concluded that the Applicants were unable to prove the existence of two daughters in China, it was open to the RAD to find they had failed to establish they are in violation of China's family planning laws. The RAD's rejection of the Applicants' testimony and documents respecting the risk of forced sterilization or coerced abortion was supported by its adverse credibility findings and country condition reports.

VI. Conclusion

[32] The application for judicial review is dismissed. None of the parties proposed that a question be certified for appeal.

JUDGMENT

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

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4367-18

STYLE OF CAUSE: XUEGUI HAN, YANGUO SUN, CHUANHAO SUN v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 2, 2019

JUDGMENT AND REASONS: FOTHERGILL J.

DATED: APRIL 12, 2019

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