

Federal Court



Cour fédérale

Date: 20191115

Docket: IMM-1611-19

Citation: 2019 FC 1429

Ottawa, Ontario, November 15, 2019

PRESENT: Madam Justice Simpson

BETWEEN:

**YESOM JEON
HYOSEO JEON
HYOJOO JEON**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered orally from the Bench in Toronto, Ontario on October 30, 2019)

I. Proceeding

[1] This application is for judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board, dated January 21, 2019, in which the Panel denied the Applicants' claim for refugee protection. This application was brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

[2] The Applicants are a 40-year-old mother [the Principal Applicant], and her two daughters who are 17 [the Elder Daughter] and 15. The Applicants are citizens of South Korea.

[3] The Applicants' claim of persecution/harm is based on 1) bullying experienced by the Elder Daughter at school in South Korea, and 2) discrimination experienced by all the Applicants in South Korea because of their North Korean heritage.

[4] After the Minister intervened to show that her initial Personal Information Form (PIF) was fraudulent, the Applicant admitted the fraud. She later filed a second PIF in 2014 [the Second PIF] and in it, she described the bullying her Elder Daughter had experienced at school.

[5] The Elder Daughter was treated by a psychiatrist in South Korea from 2010 until 2012 when the Applicants left South Korea for the United States and then Canada.

II. The Decision

[6] The Panel noted that although the Principal Applicant's general credibility was "in doubt" due to the fraudulent PIF filed in 2012, the Panel nevertheless accepted that the Elder Daughter had experienced discrimination and bullying at school in South Korea and that she suffered from ADHD and Autism. The Panel concluded, however, that she could receive psychiatric care in South Korea as she had from 2010 to 2012. The Panel also found that the bullying she experienced did not rise to the level of persecution or harm described in subsections 96 and 97 of the IRPA. As well, because the Panel concluded that the Principal Applicant's story was in doubt, her evidence about her fear of discrimination was not addressed.

III. The Issues

[7] Against this background the issues are:

1. Whether the fact that part of the audio recording of the hearing is missing amounts to a breach of procedural fairness.
2. Whether the Panel unreasonably failed to consider the forward looking risk faced by the Elder Daughter in South Korea because of her ADHD and Autism.
3. Whether the Panel unreasonably failed to refer to documentation supplied by the Applicant which dealt with the treatment of the mentally ill in South Korea.
4. Whether the Panel unreasonably failed to deal with the Applicants' fear of discrimination amounting to persecution on their return to South Korea.

1. *Incomplete Audio Recording/Transcript*

[8] The Principal Applicant says in her Memorandum of Argument that the missing evidence is material because it included her explanation for why she filed the false PIF in 2012. She says that without understanding her explanation, this Court is not in a position to assess the reasonableness of the Panel's refusal to accept her explanation and its finding that her credibility is "in doubt".

[9] I must consider this matter in context. In the Second PIF, the Applicant explained that the false PIF of 2012 was filed based on advice she was given by an agent and some members of the North Korean community in Toronto.

[10] In her affidavit for this proceeding which is dated April 7, 2019 [the Affidavit], she is consistent to some degree in that she says she relied on advice when she filed the fraudulent PIF in 2012. However, she says that the advice was given by a broker rather than an agent and she did not mention the North Koreans in Toronto.

[11] What is significant is that her explanation that she prepared the fraudulent PIF on the advice of others was given both before the hearing in the Second PIF and after the hearing in her Affidavit. There is no doubt that the Panel understood her explanation because it was rejected in the Decision on the basis that she was responsible for the contents of her PIF. For this reason, I am not persuaded that the loss of the audio recording led to a breach of procedural fairness.

2. *The Elder Daughter's Forward Looking Risk in South Korea*

[12] As noted, the Panel accepted that the Elder Daughter is autistic and has ADHD but found she had been treated in South Korea and could resume treatment on her return. In my view, this finding is forward looking and reasonable. There is no evidence in the record about where the Elder Daughter falls on the autism spectrum and it is also noteworthy that the Autism diagnosis includes no provision for medication or individual treatment.

3. *The Applicants' Documents*

[13] Although the Panel stated that he had read the Principal Applicant's documentation, in my view, it was reasonable of the Panel not to refer to it in detail because it was not material. It described hospitals and treatments such as electric shock for the mentally ill in South Korea. However, there was no suggestion that the Elder Daughter would require hospitalization or aggressive treatment.

4. *The Principal Applicant's Fears*

[14] The Panel said that because of her fraudulent PIF, the Principal Applicant's credibility was in doubt. In my view, this was a reasonable conclusion. However, he did not explicitly reject her evidence about her own fears. The question is whether, given his general negative credibility finding, an explicit rejection of her own fears was required. In my view it was not. The Decision is clear. Her evidence, except for her description of her Daughter's bullying, was clearly rejected.

IV. Certification

[15] No question was posed for certification for appeal.

V. Conclusion

[16] For all these reasons, the Application will be dismissed.

JUDGMENT IN IMM-1611-19

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

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1611-19

STYLE OF CAUSE: YESOM JEON, HYOSEO JEON, HYOJOO JEON v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

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