

Federal Court



Cour fédérale

**Date: 20200113**

**Docket: IMM-2045-19**

**Citation: 2020 FC 36**

**Ottawa, Ontario, January 13, 2020**

**PRESENT: Madam Justice Simpson**

**BETWEEN:**

**ZHIDA XIE, YANFANG LIU, RUOLIN XIE,  
JIN LIN XIE, BO LIN XIE**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**(Delivered orally from the Bench in Toronto, Ontario on December 11, 2019)**

**I. Proceeding**

[1] This application is for judicial review of a decision of the Refugee Protection Division [the RPD] of the Immigration and Refugee Board dated March 7, 2019 [the Decision], in which the panel member rejected the Applicants' claim for refugee protection based on a finding that they are excluded under Article 1E of the United Nations Convention Relating to the Status of

Refugees, July 28, 1951, [1969] Can TS no 6. This application was brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

## II. Background

[2] The Applicants are a family from China consisting of the male Principal Applicant aged 45, his wife aged 42 [the Wife], and their daughter aged 21. They are Chinese citizens. Two of their sons aged 19 and 15 are citizens of Trinidad and they also have a fourth child who is a Canadian.

[3] The Applicants rely on the Wife's Personal Information Form [PIF]. She says that because she became pregnant with her first child in September 1997, she and the Principal Applicant were in violation of China's family planning policy because they had not yet married. Their daughter was born on May 29, 1998. Two months after giving birth, the Wife was forced to wear an IUD and was fined an amount which is approximately \$4,725.00 in Canadian funds today.

[4] The Wife experienced severe lower back pain and bleeding due to the IUD but was not allowed to remove it. She therefore had it removed by a private doctor and she and the Principal Applicant left China for Trinidad and Tobago in December 1998. Their daughter stayed in China with the Principal Applicant's parents.

[5] The Wife says in her PIF that she and the Principal Applicant both received permanent resident status in Trinidad.

[6] The Wife also says that over time Trinidad they faced increasing discrimination based on their race. She says that she and her husband faced physical threats and unequal treatment. For

example, the man who delivered meat to their restaurant threatened to break their doors and windows; they were charged extra rent and extra prices at the market because of their race; and they felt that the police would not protect them.

[7] The Wife says that the children also face discrimination. The daughter was beaten by other students and when they spoke to the principal, he said he could not help because they were Chinese. The older son obtained exceptional results in school, but again due to his race, he was not accepted at the top high school. Another son experienced discrimination as well. He was refused lunch service because he was Chinese.

[8] The Wife says that the family suffered discrimination in Trinidad and says that “fearing persecution in China and Trinidad, my husband and our children left for Canada” on July 27, 2012.

### III. Decision

[9] The RPD rejected the Applicants’ claim on the basis that they were excluded under Article 1E.

### IV. The Issues

[10] The Applicants submit that the Decision should be set aside because:

1. The RPD relied on conclusions reached in Federal Court decisions and failed to undertake its own analysis of the state of family planning enforcement in Guangdong Province in China; and
2. The Board erred in law when it required the Applicants to show that they faced persecution in Trinidad.

[11] I will deal with the issues in turn.

1. *Family Planning*

[12] The RPD found that the Applicants are unlikely to be sterilized due to their ages and the fact that they had not had a child for four years. The RPD referred to the 2012 *National Population and Planning Commission of China* document which indicated that a directive had been issued banning the enforcement of family planning in a brutal way. Although there had been forced abortions and sterilizations in China, there was no evidence that any had occurred in Guangdong province since 2012. The RPD also considered country evidence and found that it indicates that historically Guangdong authorities have taken a more relaxed approach to family planning. In 2011, the director of Guangdong's family planning commission said he had applied to be "the leader in the country in the relaxation of the family-planning policy". Article 53 of the Guangdong family planning regulations indicates that the penalty for an out of plan birth is a fine. The RPD found that in these circumstances, officials in Guangzhou city would follow the 2012 Directive.

[13] The RPD also referred to new country evidence about the two-child policy, which states that second, third, and all higher births should be registered, and that Guangdong province has officially delinked fines and hukou registration for those born outside the plan, though a fine must be paid eventually. The RPD concluded from this evidence that the Applicant's non-Chinese children could be registered in a hukou and could attend school in China.

[14] The RPD also referred to evidence showing that people with second or third children in Guangdong paid fines but were neither forced to wear IUDs nor made subject to sterilization.

[15] In my view, it is clear that the RPD conducted its own analysis using the documents at hand and simply relied on the facts found in the three Federal Court decisions to confirm its findings. This was reasonable.

2. *Persecution in Trinidad*

[16] The RPD reviewed the law set out by the Federal Court of Appeal in *Zeng v. Canada (Minister of Citizenship & Immigration)*, 2010 FCA 118 as it relates to Article 1E. It can be summarized for this case as follows:

1. At the date of the hearing, does the claimant have status in the third country (Trinidad) which is substantially similar to that of its nationals?
  - In this case, the answer was no, because the Applicants had lost their permanent residence status by the hearing date. Accordingly, the Board was required to consider the next question.
2. Did the claimant previously have such status and lose it, or had access to such status but failed to acquire it? If no, the claimant is not excluded.
  - In this case, the answer was yes, because there was no dispute that due to the passage of time, the Applicants' permanent residence status in Trinidad had been lost.
3. The Board was therefore required to balance various factors. They included, but were not limited to:
  - 1) The question of why the Applicants lost their status in Trinidad and in particular whether that loss was voluntary or involuntary;
  - 2) Whether the Applicants could return to Trinidad;
  - 3) The risk the Applicants would face in China;
  - 4) Canada's international obligations; and
  - 5) Any other relevant facts.

[17] The RPD considered and rejected the Applicants' claims that they faced persecution in Trinidad due to their Chinese ethnicity and therefore concluded that they had left Trinidad

voluntarily. The RPD also considered each of the alleged incidents of persecution described below:

1. the daughter being bullied;
2. one of the sons not being admitted to classes for exceptional students;
3. a threat from a meat deliveryman;
4. discrimination at the hospital; and
5. a robbery of their store.

[18] In my view, the IRB did not require the Applicants to demonstrate that they faced persecution in Trinidad. The Applicants raised the issue of persecution and attempted to establish it and the RPD dealt with their allegations as part of its analysis of the question of whether they lost their permanent resident status in Trinidad voluntarily (because they were asylum shopping) or involuntarily (because they left to escape persecution). This was a reasonable treatment of the Applicants' allegations. However, I note that the RPD also considered whether any of the incidents listed above were serious even though they did not rise to the level of persecution. In each case, they were determined to not be serious, or not credible. In my view, the test in *Zeng* therefore was met.

V. Conclusion

[19] The application will be dismissed.

VI. Certification

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

**JUDGMENT IN IMM-2045-19**

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

"Sandra J. Simpson"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2045-19

**STYLE OF CAUSE:** ZHIDA XIE, YANFANG LIU, RUOLIN XIE,  
JIN LIN XIE, BO LIN XIE v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** DECEMBER 11, 2019

**JUDGMENT AND REASONS:** SIMPSON J.

**DATED:** JANUARY 13, 2020

**APPEARANCES:**

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