

Federal Court



Cour fédérale

Date: 20200305

Docket: IMM-5415-18

Citation: 2020 FC 335

Ottawa, Ontario, March 5, 2020

PRESENT: Madam Justice Simpson

BETWEEN:

HONGMEI LI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered orally from the Bench in Toronto, Ontario on December 12, 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 October 12, 2018 [the Decision], in which the panel member [the Member] denied the Applicant's claim for refugee protection on the basis that she lacks credibility and did not establish that she is lesbian. 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 Applicant is a 40-year-old female citizen of China. She was married to a man in China on March 6, 2008 and she gave birth to a son in July of 2010. The couple divorced in 2012.

[3] The Applicant initially claimed refugee protection based on her experiences with the family planning authorities in China. However, she amended her PIF to say that she was also at risk as a lesbian. Since the issues raised in this application all deal with that claim, I will not review the facts and negative credibility findings relating to the family planning claim.

[4] In her Amended PIF, the Applicant added a claim due to her identity as a lesbian. She says that as a young woman in China, she was not interested in the men who approached her, and felt more comfortable in the company of her female friend Dan. Although the Applicant and Dan were attracted to each other, they felt they could not act on their feelings for fear of losing face with their families.

[5] The Applicant arrived in Canada in November 2012 and shortly thereafter met an older woman named Yinghui Zhu [Ms. Zhu]. They became physically intimate.

[6] The Applicant and Ms. Zhu married on August 17, 2013. However, the marriage failed, and their divorce was finalized in October 2017.

[7] The Applicant called her friend, Dan in China, and poured out her troubles. The Applicant did not realize that Dan would be critical of her sexual orientation. The Applicant says, “Although my parents knew about my marriage, they did not want other people in China to know about it.” However, Dan told many relatives and friends, and soon everyone was aware.

III. Decision

[8] The RPD denied the Applicant’s claim for refugee protection, finding that the Applicant did not provide sufficient credible and trustworthy evidence to establish that she is a lesbian and that she was in a genuine marriage with Ms. Zhu.

[9] The RPD noted that the Applicant did not call any witnesses to support her claim of being a lesbian. In particular, Ms. Zhu did not testify even though the Applicant stated that they still talk on the telephone. The Applicant testified that Ms. Zhu knew about the RPD hearing but that she had left the country to visit relatives in China who were in poor health. The RPD found it very unusual that the Applicant did not ask Ms. Zhu to delay her trip by a couple of days since there was no emergency involved in the trip to China.

[10] The RPD also noted that the Applicant did not call either of Ms. Zhu’s adult children to establish that the Applicant and their mother had cohabited. The RPD noted that although the

Applicant testified that her circle of friends know she is a lesbian, none of those friends were called to testify. Further, she did not submit any supporting letters or affidavits.

[11] The RPD found that the Applicant's failure to call witnesses or provide documentary evidence to corroborate her sexual orientation detracted from her credibility.

IV. The Issues

[12] The dispositive issue in this case is whether the RPD was obliged to consider whether the Applicant's legal marriage to a woman in Canada will cause her to be perceived as a lesbian and face a risk of persecution on her return to China.

[13] It is clear that although the RPD did not accept that the Applicant had established that she is a lesbian, her marriage to a woman, which the RPD did accept, creates that perception. The expert testimony of Dr. Burton, to which the RPD made no reference, indicates that, although homosexuality is legal in China it is not accepted and attracts a high degree of stigma. He posits that it will cause a known homosexual serious harm in areas of employment, children's education and other aspects of life, which involved the government, which in China is very wide number of aspects. This will be a particularly problematic once the new social credit system comes into force in 2020.

V. Conclusion

[14] In my view, because Dr. Burton showed the possibility that the Applicant could face discrimination amounting to persecution it was incumbent on the RPD to address this issue and Dr. Burton's evidence.

VI. Certification

[15] No question was posed for certification.

JUDGMENT in IMM-5415-18

THIS COURT'S JUDGMENT is that the application for judicial review is allowed and the issue of the Applicant's residual profile is to be reconsidered by a different Member.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5415-18

STYLE OF CAUSE: HONGMEI LI v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 12, 2019

JUDGMENT AND REASONS: SIMPSON J.

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