

Federal Court



Cour fédérale

Date: 20220906

Docket: IMM-157-20

Citation: 2022 FC 1261

Ottawa, Ontario, September 6, 2022

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

**DAI, JIAXING
LIU, RUMING
LIU, W Aidong
LIU, SENLIN**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are a family. Jiaxing Dai (“Ms. Dai”) is the wife of Ruming Liu and together they are the parents of the minor Applicants, Weidong Liu and Senlin Liu. The Applicants are citizens of China who made refugee claims in Canada. They fear persecution

because of their opposition to China's family planning regulations and policies. Ms. Dai alleges that when her pregnancy was discovered by the family planning authorities, she was subjected to a forced abortion and advised that she would have to undergo a sterilization procedure. The Refugee Protection Division [RPD] refused the Applicants' claim. They appealed this refusal to the Refugee Appeal Division [RAD]. The RAD dismissed the appeal. The Applicants challenge the RAD's dismissal of their appeal in this judicial review.

[2] The RAD gave little or no weight to a number of the Applicants' family planning documents. The RAD also found that the objective documentary evidence did not support the Applicants' allegations that Ms. Dai had been subjected to a forced abortion, nor that she would be subjected to forced sterilization.

[3] The RAD's assessment of the Applicants' personal documents is unreasonable. In particular, I find that the RAD's evaluation of the Family Planning Services Certificate was microscopic and not supported by the objective evidence on which the RAD relied. The RAD's evaluation of this document was central in its assessment of a number of the Applicants' other corroborating documents that went to making out the key elements of their claim. Accordingly, I find the decision must be redetermined.

[4] Based on the reasons set out below, I grant the judicial review.

II. Background

[5] The adult Applicants had their second child (one of the two minor Applicants) in 2012 in contravention of the family planning regulations in Guangdong, China at the time. They were required to pay a fine but only made a partial payment. The Applicants allege that, from mid-2013 to mid-2017, family planning officials periodically came to the Applicants' home to remind them of the outstanding fine owed.

[6] After Ms. Dai's second child was born, the family planning authorities required Ms. Dai to have an intrauterine device ("IUD") inserted to prevent future births. When Ms. Dai's IUD was displaced, she became pregnant in 2017. Family planning authorities allegedly discovered Ms. Dai's pregnancy at a routine IUD examination and forced her to undergo an abortion in 2017. After the abortion, government officials at the Family Planning Office allegedly advised Ms. Dai that she would be sterilized due to her repeated violations of the family planning policy. The sterilization did not take place then because Ms. Dai had acute pelvic inflammatory disease. Instead, she was asked to report to a doctor monthly. According to the Applicants, the expectation was that once she healed, the sterilization would take place.

[7] The Applicants allege that they decided to leave China to avoid the forced sterilization procedure. They left China in November 2017, first arriving in the United States, and then Canada, where they made their refugee claims. The Applicants allege that after they left China, government officials came to their home and advised their relatives that the sterilization procedure would have to take place when the family returned.

[8] The RPD heard the Applicants' refugee claim on January 16, 2019. The RPD dismissed their claim on February 19, 2019. The RPD based its decision primarily on its finding that the documents presented by the Applicants relating to their violations of the family planning policy were not likely genuine. The RPD also found that objective evidence did not support the Applicants' allegations that coercive measures, such as forced abortions and sterilizations, still occur in the Applicants' home province.

[9] The RAD, in a decision dated December 16, 2019, agreed with the RPD that a number of the family planning documents were not genuine but for different reasons than the RPD had provided. The RAD also agreed that the country conditions evidence did not support the Applicants' allegations, specifically that forced abortions and sterilizations continued to take place in their home city.

III. Issues and Standard of Review

[10] The Applicants raise two issues: 1) the reasonableness of the RAD's evaluation of the Applicants' personal documents and its finding that some of these documents were not genuine; and 2) the reasonableness of the RAD's evaluation of the country conditions evidence and its finding that forced abortions and sterilizations do not occur in the Applicants' home city. As set out above, I find the RAD's evaluation of the Applicants' personal documents the determinative issue in this judicial review.

[11] Both parties agree that the reasonableness standard applies. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]

confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption.

IV. Analysis

[12] The Applicants filed a number of corroborative documents relating to Ms. Dai's reproductive health history and her experiences with the Family Planning Office ("Family Planning Documents"). The RAD notes that these documents "go to the heart of [the Applicants'] claim." I agree with the Respondent that unlike the RPD, the RAD undertook a detailed evaluation of the Family Planning Documents. I have carefully reviewed the RAD's evaluation of the Family Planning Documents and the Applicants' argument about the deficiencies in this evaluation.

[13] I agree with the Applicants that there are serious shortcomings in the RAD's evaluation of a central document: the Family Planning Services Certificate ("Family Planning Booklet"). The RAD used its determination about the Family Planning Booklet to draw further negative inferences about the Applicants' other documents that corroborated two key allegations in the claim: the forced abortion in 2017 and the threat of a sterilization procedure. I am satisfied that the deficiencies in the RAD's analysis of the Family Planning Booklet are "sufficiently central... to render the decision unreasonable" (*Vavilov* at para 100).

[14] Key to the RAD's assessment of the Family Planning Booklet was a Response to Information Request that addresses the family planning documents issued in Guangdong

Province and includes a sample Family Planning Booklet. The RAD provided this Response to Information Request to the Applicants and informed them that it was disclosed “in relation to the information it contains about family planning documents, their content, and what they looked like compared to the documents submitted by the Appellant.” The Applicants explained in their submissions to the RAD that the Family Planning Booklet they had submitted mirrored the one provided in the sample.

[15] The RAD did not agree. The RAD found “significant omissions and inconsistencies” between the sample Family Planning Booklet and the document provided by the Applicants. This led the RAD to draw a “negative credibility inference regarding the ... allegations of forced abortion and sterilization.” I find that the inconsistencies noted by the RAD are microscopic. I also find the objective evidence on which the RAD relied did not support its view that there were significant omissions in the Applicants’ documents as compared to the sample.

[16] The RAD noted the difference in the English translation of a heading in the Applicants’ Family Planning Booklet and the sample: “Informed Choice Record of Contraception” in the Applicants’ document versus “Record of Informed Choice in Contraception and Birth Control” in the sample. I find the difference between these headings to be insignificant, particularly given that the comparison is between two translations. The distinction drawn by the RAD is an example of the type of microscopic evaluation of the evidence that has been found by this Court to be an unreasonable basis on which to make negative credibility inferences (*Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 23).

[17] The Applicants also argued that the RAD should have considered that the heading in the sample was identical to the heading in their document if it compared the Chinese characters in the two documents. There was no evidence presented that explained that the Chinese characters were identical; the Applicants asked the Court to engage in this evaluation on its own. Given my finding that the difference between the English translations was microscopic, I need not engage with this argument. I note, however, that Justice Little recently addressed this issue in *Shi v Canada (Citizenship and Immigration)*, 2022 FC 196 at paragraph 22, where he found that “the contents of a translation should be resolved by evidence from qualified professionals, not by untrained eyes deciding whether Chinese characters seem to look alike”.

[18] The RAD also found a number of omissions in the Applicants’ Family Planning Booklet. In my view, the RAD based these findings on its own speculation about what should be in the document and not on objective evidence.

[19] The RAD noted that the birth certificate numbers of the children were not filled out in the Applicants’ Family Planning Booklet. There was no evidence to suggest that these numbers are routinely filled out by hand. This is not a basis to find a significant omission.

[20] The other omissions relate to information about Ms. Dai’s reproductive procedures and health that the RAD expected to see recorded in particular places in the Family Planning Booklet. I find that the RAD’s expectations were not based on objective evidence but rather on speculation.

[21] For example, the RAD noted that it expected to see Ms. Dai's IUD insertion in 2012 and subsequent checks in the "Record of Informed Choice in Contraception and Birth Control" section in the Family Planning Booklet. The RAD failed to note that the IUD insertion and checks (20 entries) are all recorded in another section entitled "Pregnancy Examination Record." This section notes in the entry for June 20, 2017 that the IUD was displaced and Ms. Dai was pregnant. The RAD did not acknowledge this notation in the Family Planning Booklet, which is consistent with the Applicants' evidence that Ms. Dai's pregnancy was discovered and that she was forced to undergo an abortion on the same day.

[22] There is no basis for the RAD's finding that the IUD insertion and checks should have been recorded in the particular section it identified. The Response to Information Request document did not indicate this; the RAD's conclusion was based on its own view of what to expect based on the wording of the heading. This was speculative on the RAD's part and not a basis to draw a negative inference.

[23] The RAD also drew a negative inference from the omission of information about Ms. Dai's pelvic inflammatory disease, forced abortion, and a potential sterilization in the Family Planning Booklet. The basis for this finding was the RAD's view that the Family Planning Booklet should include all family planning actions and histories. The Response to Information Request document does not state that forced abortions, plans for potential sterilizations, and other medical conditions are all routinely recorded in the Family Planning Booklet. Absent evidence that this specific type of information is routinely recorded and updated in the Family Planning Booklet, drawing a negative inference based on its absence is unreasonable. This is

particularly the case here, where there were other corroborating documents confirming the abortion, the planned sterilization, and the pelvic inflammatory disease.

[24] The RAD gave these other corroborating documents from a hospital in the Applicants' home city (the Clinic (Emergency) General Medical Record Booklet and Illness Diagnosis Certificate) little or no weight because of its finding that the information about the 2017 abortion and the pelvic inflammatory disease should have been recorded in the Family Planning Booklet. The RAD's deficient analysis of the Family Planning Booklet impacted its evaluation of these other documents.

[25] The Applicants' documents confirming the abortion and planned sterilization were also consistent with the Response to Information Request upon which the RAD relied. The Response to Information Request notes that "hospitals 'issue reports [booklets] detailing medical records on abortions, sterilizations, and/or the implantation of an IUD to patients.'" I also note that the RAD found that the Illness Diagnosis Certificate only attested to Ms. Dai's medical condition "but not to the abortion or the requirement to undergo sterilization." This is inaccurate as this certificate states, "sterilization is not advisable for the time being, the operation shall be arranged after recovery." The RAD made no reference to this statement which accords with the Applicants' evidence that a sterilization procedure was planned.

[26] Overall, I find that there are serious shortcomings in the RAD's evaluation of the Applicants' personal documents. These are not minor missteps. Rather, they go to the heart of

the Applicants' claim for protection. Accordingly, the decision cannot stand and must be redetermined.

[27] The application for judicial review is granted. Neither party raised a question of general importance and I agree that none arises.

JUDGMENT IN IMM-157-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted;
2. The RAD decision, dated December 16, 2019, is set aside and sent back to be redetermined by a different member; and
3. No question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-157-20

STYLE OF CAUSE: JIAXING DAI ET AL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

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