

Federal Court of Canada  
Trial Division



Section de première instance de  
la Cour fédérale du Canada

IMM-4219-97

NOV 20 1997

Between:

JIE SUN (ALSO KNOWN AS JESSIE SUN),

Applicant,

- and -

THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION,

Respondent.

**REASONS FOR ORDER**

**ROULEAU, J.**

The application for a stay of an exclusion order issued by a Senior Immigration Officer was heard at Vancouver, British Columbia on Friday, October 10, 1997. The officer issued an exclusion order on the basis that the applicant was not in possession of a valid and subsisting passport upon entering Canada.

Counsel for the applicant submits that the applicant was not given an opportunity to a fair hearing: that there was a breach of procedural fairness; in the alternative that the immigration officer failed to recognize a refugee claim prior to issuing the exclusion order.

The applicant is seven months pregnant; she arrived by Singapore Airlines at Vancouver International Airport on Saturday, September 27, 1997. She carried with her a Swaziland passport and a visitors permit valid until October 12, 1997. Because of information received by Immigration Canada from the Singapore office

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she was detained upon arrival until the 29th of September when she was released to seek medical help upon the condition that she report to Immigration authorities when notified.

She had originally been met at the airport by one Raymond Tang with whom her companion, one Mr. Jing Hua Frank Li, was to discuss some business venture; Mr. Tang, the Canadian host, was accompanied by Bruce D. Redekop, a barrister and solicitor from Vancouver, B.C. He obviously left his address with authorities upon the release of this applicant and Mr. Li since on October 1, 1997 he received a letter dated September 29, 1997 requesting that both parties report to Canada Immigration at the Airport on October 1, 1997 at 16:00 hours.

It is alleged by Mr. Redekop that he was not allowed to assist this applicant while her inquiry proceeded; also it was submitted before me that this gentleman was a corporate lawyer not familiar with immigration matters.

Following the interview an exclusion order was issued pursuant to subsection 23(4) of the *Act* because the Senior Immigration officer was satisfied that she was a person described under paragraph 19(2)(d) and Regulation 14(3) - not having in her possession a valid and subsisting passport valid for travel to Canada. The applicant signed the exclusion order "fully understanding the above decision".

It was submitted that the Immigration officer realizing that this person was born in the People's Republic of China and after further questioning informed that she obtained the Swaziland passport by way of an Investment Centre just a few weeks prior to her departure (August 29, 1997); and having been told that she had returned of her P.R.C. passport; the officer ought to have suggested that this applicant submit a claim for refugee status.

There is no duty on any Immigration officer to suggest anything to strangers arriving in Canada.

It is also argued that this exclusion order brings about consequences that are very serious. Of this I have no doubt; such an order will create considerable hardship for any person who wishes to return to Canada.

Submitted also was that balance of convenience favours the applicant and surely irreparable harm could conceivably come to her; it is submitted that she will more than likely be returned to the People's Republic of China and being an unmarried person could face difficulties and even be subjected to an abortion. There is also on file medical evidence from a general practitioner physician who examined her and concluded that she should not travel in her condition.

It was submitted by counsel that in light of the power conferred on a Senior Immigration officer who acts in as an administrative tribunal in issuing removal orders, he should be bound to act fairly; allow counsel to be present; advise the concerned person of consequences; permit submissions; and provide reasons for the decision.

This applicant was in Canada for at least five days before the exclusion order issued and had ample opportunity to seek advice; she had been detained and questioned for three days before her release; she must have been apprehensive and undoubtedly in close contact with both Mr. Tang and his counsel Mr. Redekop.

I reject the medical evidence and prefer that of Dr. M. M. Garrey a respected specialist in the field of gynaecology who examined her on behalf of Singapore Airlines, not the Minister, who asserts that the applicant is able to fly.

This applicant obtained a Swaziland passport by applying through an Investment Centre in Hong Kong; she then returned her P.R. of China passport. Had she intended to claim refugee status she had ample opportunity to do so after arrival. Even while a resident of the P.R. of China had it been her initial intention to come to Canada to claim refugee status because she feared for herself being an unmarried pregnant lady; I am satisfied that the resourcefulness she displayed to obtain a Swaziland passport and a visitors permit to come to Canada, she would have found measures to accomplish her goal had it been her intention.

Obviously, the Immigration officer had some problems with credibility. She initially advised that she had been in Swaziland since 1995; then admitted to being there only since late August of 1997. She also confessed that coming to Canada was not so much to further business interests, but to remain and give birth to her child.

The Senior Immigration Officer, if he found the Swaziland passport not to be authentic had the right and duty under the *Act* to issue the exclusion order. If he is correct in determining that the passport is false, how can one find fault with him exercising his obligation, that of issuing an exclusion order. The balance of convenience surely favours the Minister who is under an obligation to enforce what parliament has directed as well as be concerned with the public's interest. If on the other hand, if he is wrong, the applicant has a valid Swaziland passport, she can return to that country. To suggest that she will necessarily be returned to the P.R. of China and is concerned about her physical well being is purely speculation at this juncture. She is being properly returned to Singapore.

Motion dismissed.

(Sgd.) "P. Rouleau"  
Judge

October 10, 1997  
Vancouver, British Columbia

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**STYLE OF CAUSE:** JIE SUN (ALSO KNOWN AS JESSIE SUN)

- and -

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**COURT NO.:** IMM-4219-97

**PLACE OF HEARING:** Vancouver, BC

**DATE OF HEARING:** October 10, 1997

**REASONS FOR ORDER OF ROULEAU, J.**  
dated October 10, 1997

**APPEARANCES:**

Mr. Gordon Meynard for Applicant

Mr. Brian Frimeth for Respondent

**SOLICITORS OF RECORD:**

McCrea & Associates for Applicant  
Vancouver, BC

George Thomson for Respondent  
Deputy Attorney General  
of Canada

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