Date: 20071004

Docket: IMM-5103-06

Citation: 2007 FC 1001

BETWEEN:

YIN HUAN SHEN
JUN CAO YONG
HUI SHAN CAO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT

Pinard J.

[1] The applicants, a husband, wife and their daughter, are seeking judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated August 16, 2006, determining that the applicants are not "Convention refugees" and not "persons in need of protection".

[2] The applicants arrived in Canada, from Guangzhou in the Guangdong province of China, in 2003, and sought protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27. In her Personal Information Form (PIF), the female applicant claimed that she had been forced to wear an intra-uterine device (IUD) after the birth of her first child, despite the discomfort and excessive bleeding it caused. When officials discovered, during a routine check-up, that she was pregnant with a second child, she was subject to an immediate forced abortion. Since the IUD could not be replaced immediately after the abortion, the applicants were required to pay a guarantee of 5,000 RMB in order to ensure that the female applicant would return in one month's time for reinsertion of the IUD. Instead, the applicants went into hiding and, after two months, came to Canada. The applicants claim they face forced sterilization if they return to China.

[3] The Board rejected the applicants' claims to refugee and protected person status. For the Board, the primary issue in the claims concerned the credibility of the claimants' subjective fear of persecution if they returned to China. In particular, the Board determined that the female applicant was not credible with regard to her claim of being subjected to a forced abortion, and that the applicants were not credible with regard to their claim that they faced forced sterilization if they were to return to China.

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[4] The applicants rely on *Cepeda-Gutierrez v. Canada (M.C.I.)* (1998), 157 F.T.R. 35, to argue that, while the Board need not refer to every piece of evidence before it, its burden of explanation increases with the relevance of the evidence in question to the disputed facts, and that, in this case, the Board completely ignored highly relevant evidence.

[5] In *Cepeda-Gutierrez*, *supra*, the Court determined that it may infer, from an agency's failure to mention some evidence in its reasons, that the agency made a decision that was not based on the evidence before it. However, "the reasons given by administrative agencies are not to be read hypercritically by the court […] nor are agencies required to refer to every piece of evidence that they received that is contrary to their finding." The Court did, nevertheless, point out that "a blanket statement that the agency has considered all the evidence will not suffice when the evidence omitted from any discussion in the reasons appears squarely to contradict the agency's finding of fact."

[6] In my view, *Cepeda-Gutierrez* is distinguishable from this application, since the evidence in that case was particular to the applicant, whereas the evidence which the applicant claims was ignored here is general documentary evidence.

[7] However, even if *Cepeda-Gutierrez* applies, I am of the opinion that the Board's decision was not patently unreasonable. The Board clearly engaged in a weighing of the conflicting evidence when it determined that the female applicant "may or may not be telling the truth" on the issue of forced abortion. As the respondent points out, the Board is entitled to determine what evidence it will rely on in the case of conflicting evidence, and it can also decide to prefer documentary evidence to testimony (*Ganiyu-Giwa v. Canada (M.C.I.)*, [1995] F.C.J. No. 506 (T.D.) (QL)). The Board determined that the female applicant's claim was not credible because she claimed that forced abortions were standard practice in her region, a claim which was not supported by the documentary evidence. This is clear from the following excerpts from the Board's reasons:

> A 2001 study of Chinese birth planning noted that the one-child standard remained in place and that a woman with an out-of-plan-pregnancy would be the subject of determined official social pressure

> to undergo an abortion. However, if a woman insisted on carrying an out-of-plan pregnancy to term, the punishment is "a substantial fine and revocation of any one-child benefits for the parents…" In addition, reports of specific incidents of forced abortions and forced sterilization in the region of Guangzhou, the claimants' home region, in the period 2002-2005, could not be found among the sources consulted by the IRB's Research Directorate. This does not mean that none occurred. Information regarding such matters is often difficult to obtain. However, it seems clear that such persecutory measures were not the standard official response in 2003. […]
>
> The female claimant stated in her Personal Information Form (PIF) that the requirement to use an IUD and the discomfort and excessive bleeding it caused "was the beginning of the persecution." In this regard, a document titled, "Procedures Governing Population and Family Planning Management in the City of Guangzhou" notes that alternative means of birth control may be chosen if medical officials certify that the IUD is inappropriate for health reasons. The same document notes a range of situations in which more than one child is permitted. I take a negative inference from the female claimant's uncritical generalizations concerning abortions and sterilization as standard policies and her emphasis on the burdens of using an IUD without any apparent attempt to seek alternative protection. While it is not possible to know whether the female claimant has had an abortion and the particular circumstances in which it might have taken place, I find the female claimant's story of an immediate forced abortion and denial of access to her family not to be credible.

[8] The role of the Court in this case is not to determine whether or not it agrees with the Board's assessment, but rather to determine whether the Board's decision was patently unreasonable. The above excerpt demonstrates that the Board considered the fact that there was conflicting evidence, and that its conclusion is not patently unreasonable.

[9] The applicants also challenge the Board's decision not to give weight to the register which had been submitted by the female applicant. In this regard, the Board stated:

> The female claimant's narrative concerning her second pregnancy and subsequent forced abortion was supported by an IUD check register. However, the authenticity of the register was in doubt and it was subjected to a forensic examination. The result was 'inconclusive' because of the lack of a genuine corresponding specimen. There is, therefore, no firm documentary support for her story. […]

[10] The applicants take issue with this assessment of the document, and argue that the Board should have given it more weight based on the forensic report's further statement that, although the findings were inconclusive, the document had not been produced by copier or printer and "all written data is consistent with a specific handwriting tool."

[11] However, this argument again goes to the weight the Board gave to the evidence. It is clear from the panel's above statement that the Board considered the register, but determined that it was of low value. It was within the Board's power to do so. Therefore, I do not find that the Board's determination that the female applicant's claim of forced abortion lacked credibility was patently unreasonable.

[12] The applicants further claim that, if they return to China, they face forced sterilization because they have violated the one-child policy. The Board found that this claim also lacked credibility, but the applicants submit that the Board again failed to address relevant evidence.

[13] I would dismiss this claim as well. The Board's reasons make it clear that it considered the conflicting evidence:

> . . . Country documents provide mixed messages regarding the nature of any penalty that the two adult claimants might experience. However, the preponderance of such evidence indicates that their likely penalty would be a fine and the denial of social benefits, burdensome but not persecution.

[14] The Board was entitled to come to this conclusion. As Justice Pelletier pointed out in *Conkova v. Canada (M.C.I.)*, [2000] F.C.J. No. 300 (T.D.) (QL), "[t]he view which the [Board] took of the evidence was one which could reasonably be taken, just as the opposing view could also reasonably be taken. […] As long as its conclusion is not one which is wrong on its face, it is not patently unreasonable."

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[15] For all the above reasons, I find that the Board's decision that the applicants' claims were not credible was not patently unreasonable, and as a result, the application for judicial review is dismissed.

"Yvon Pinard"
Judge

Ottawa, Ontario
October 4, 2007

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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