

**Date: 20080605**

**Docket: IMM-4449-07**

**Citation: 2008 FC 711**

**Toronto, Ontario, June 5, 2008**

**PRESENT: The Honourable Maurice E. Lagacé**

**BETWEEN:**

**MIN FENG ZHAN  
XING YI ZHENG**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review made pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated October 1, 2007, wherein the applicants were found not to be Convention refugees nor persons in need of protection under sections 96 and 97 of the Act.

## 1. The Facts

[2] The primary applicant (the applicant) and her minor son are citizens of the People's Republic of China. They come from a rural household in the Fuzhou region of the province of Fujian. The applicant claims that after she had the minor applicant in 1995, she wore an Inter-Uterine Device (IUD) and attended regular IUD examinations as required by Chinese law. When she became pregnant again in April 2000, the applicant claims to have gone into hiding to give birth to a second child.

[3] According to the applicant, her second child was discovered when she brought him to a hospital for treatment. After the discovery of her second child, the applicant claims that she was instructed to undergo sterilization surgery. However, the surgery was postponed because the applicant was suffering from a chronic pelvic infection. The applicant asserts that she paid a fine as required.

[4] The applicant claims she then moved at this point to a relative's home for a period of a few years. She explains her motivation to do so was to avoid subsequent visits from Family Planning Officials (FPO). However, the applicant alleges that when she returned home in May 2006, the FPO found her and demanded additional fines because of her attempt to avoid them. She also claims that they threatened to suspend her first child from school and to not allow her second child to register for school.

[5] The applicant also alleges that in July 2006 her doctor stated that she was healthy enough for the sterilization operation, and that both she and her husband then went into hiding.

[6] On August 20, 2006, the applicant asserts that she finally left China with her elder son and arrived in Canada that same day.

## II. The Decision of the Board

[7] The Board rejected the applicant's refugee application on the basis that, given the cumulative negative inferences and findings it had made, the applicant's assertion that FPO were pursuing her and required her to be sterilized were not credible. Because of that, the Board found that the applicant had not satisfied her burden to establish a serious possibility that she would be persecuted or that she would personally be subjected to a risk of cruel and unusual treatment or punishment or in danger of torture by any authority in the People's Republic of China.

[8] In reaching these findings and negative inferences, the Board considered a number of Responses to Information Requests (RIR).

[9] The Board referred to RIR CHN40685.E when it noted that there was a flexible policy regarding second children for rural families and that two-child families were common in rural areas.

[10] The Board referred to RIR CHN43031.E when it noted that the Population and Family Planning Regulations of Fujian indicate that social compensation fees that rise with each unauthorized child is the penalty for unauthorized children. The Board also referred to RIR CHN43031.E in noting that the social compensation payment was for the enhanced future social costs of benefits to be received by the second child.

[11] The Board referred to RIR CHN43165.E when it noted that the IRB Research Directorate could not find incidents of forced abortion or sterilization in Fuzhou for the period 2002 to 2005.

[12] Ultimately, the Board noted that there were mixed messages in the country documents. However, the predominant message, especially in regard to the applicant's province, is that the penalty for a second child that the applicant most likely faced is a fine meant to compensate the government for the additional social costs that must be paid before the second child will register in the family *hukou*.

### III. Issues

[13] This application raises two issues for consideration:

- a. Did the Board err in its interpretation and analysis of the RIRs? and
- b. Did the Board use that documentary evidence selectively and ignore other evidence that contradicted its findings?

#### IV. Standard of Review

[14] Neither party provided submissions on the standard of review, except for a brief reference in the respondent's memorandums to what used to be called the *standard of patent unreasonableness*. The reference by the respondent to the *standard of patent unreasonableness* is explainable since at the time the respondent prepared his memorandum and further memorandum the Supreme Court had not yet rendered its decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9.

[15] As we know now from *Dunsmuir*, the Supreme Court altered the standard of review analysis, moving from three to two standards of review: reasonableness and correctness. In that decision, the Court states that "[...] questions of fact, discretion and policy as well as questions where the legal issues cannot be easily separated from the factual issues generally attract a standard of reasonableness while many legal issues attract a standard of correctness. Some legal issues however, attract the more deferential standard of reasonableness" (*Dunsmuir*, above, at paragraph 51).

[16] Considering the factual nature of the question in issue, and the special expertise of the Board, the Court finds the standard of review to be that of reasonableness. According to this standard, the Court's analysis of the Board's decision will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] [...] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at paragraph 47).

## V. Submissions

[17] The applicant submits that the RIRs CHN40685.E, and CHN43031.E do not support the conclusion that there was a flexible policy for second children in certain parts of rural China and that fines, not sterilization, are the penalty for unauthorized births.

[18] The applicant also submits that the Board misconstrued on the RIR CHN43165.E. The applicant admits though it provides that no specific incidents of forced abortions could be found in the Fuzhou region, but insists that there are passages suggesting that such abortions/sterilizations could have occurred or that they did occur.

[19] Finally, the applicant submits that the Board ignored recent contradictory evidence.

[20] The respondent submits for his part that the RIRs clearly support the findings the Board made. The respondent also asserts that the Board acknowledged that there was also evidence that did not support its conclusions but found that the predominant message was that a fine rather than forced abortions or sterilizations is what the applicant would face in Fujian.

## VI. Analysis

[21] The Court finds no error on how the Board used the RIRs CHN40685.E and CHN43031.E in its decision. The selective quotes drawn out of the documents by the applicant do not contradict

the Board's interpretation of the document, and are merely general statements of support for the one child policy that make no reference to forced abortions or sterilizations. The RIR CHN40685.E indicates that there is some flexibility in the one-child policy, while RIR CHN43031.E indicates a social compensation fee as the consequence of having a second child.

[22] Second, RIR CHN43165.E was relied on for a very specific fact: that the IRB Research Directorate could not find incidents of forced abortion or sterilization in Fuzhou for the period 2002 to 2005. It is therefore irrelevant that there is information in the document that either suggests that a lack of evidence does not mean that forced abortions or sterilizations are not occurring nor is it relevant that there is one example in the document of such a claim that was not backed up with case examples. RIR CHN43165.E was quoted in the decision for a very specific passage.

[23] Ultimately, the Board noted that there was some contradictory information, but found that the preponderance indicated that the penalty for the applicant's second child would have been a fine rather than forced sterilization. Therefore, the Board did not ignore the contradictory information before it.

[24] The Board, acting within its specialized jurisdiction, was entitled to accept the proof as a whole, only part of it or refuse it completely. The fact that it relied or interpreted the proof and the RIRs differently than expected by the applicant does not mean that the Board did not consider all the evidence it is presumed to have considered.

[25] Overall and after considering the proof, the Board's decision, and the arguments of the parties the Court finds that the applicant failed with her burden to demonstrate the decision's unreasonableness. On the contrary, the Court finds that the decision flows from a well-reasoned analysis of the facts and falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law and is therefore reasonable. The Board, being a specialized tribunal, its decision deserves deference and the applicant has not presented any valid reasons for this Court to intervene and substitute its own opinion. Therefore, the application will be dismissed.



**JUDGMENT**

**FOR THE FOREGOING REASONS THIS COURT** dismisses the application for  
judicial review.

“Maurice E. Lagacé”  
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Deputy Judge

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

**DOCKET:** IMM-4449-07

**STYLE OF CAUSE:** *MIN FENG ZHAN, XING YI ZHENG v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION*

**PLACE OF HEARING:** Toronto, Ontario

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