

Federal Court



Cour fédérale

Date: 20101203

Docket: IMM-1723-10

Citation: 2010 FC 1225

Ottawa, Ontario, December 3, 2010

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**MIN ZHANG
YI ZHONG**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] The Applicants are a mother and daughter from China who sought refugee status – protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) because the mother (Applicant) was threatened by her deceased husband’s family to

share in her inheritance from her late husband. Her application to the Immigration and Refugee Board (IRB) was denied. This is the judicial review of that IRB decision.

II. FACTUAL BACKGROUND

[2] The Applicant's husband was in Canada as a skilled worker and had permanent resident status. On January 16, 2006, he was killed here on his way to work.

[3] The Applicant claimed that her husband's family, principally her father-in-law and brothers-in-law, made her life difficult by obstructing her efforts to get to Canada with her daughter. Most importantly, they threatened to harm her unless she gave them \$250,000 which they believed she was entitled to from her husband's estate.

[4] In the face of the threats the Applicants came to Canada without the knowledge of her husband's family. Two years later the Applicants applied to the IRB.

[5] The IRB concluded that in respect to the s. 96 claim, there was no nexus to a Convention ground. The essence of the Applicant's claim was the attempt to extort money from her; not persecution based on gender or family violence.

[6] With respect to s. 97, the IRB found that the Applicants, after failing to file a refugee claim for two years, applied for an H&C on the basis that their dream was to remain in Canada, to obtain compensation that was pending before the courts and to obtain a Canadian education. The

Applicants claimed they would have trouble re-establishing themselves in China. They never expressed a fear of returning to China.

[7] Based on the above findings, the IRB concluded that the Applicants did not have a subjective fear. It is apparent from the reasons that the IRB found the Applicants' story less than persuasive.

[8] The IRB then went on to consider state protection and concluded that that issue was determinative. The state protection analysis was conducted in two parts. The first part was a general state protection analysis in the context of s. 97 and a fear due to extortion demands. In this analysis, the IRB found that the Applicants had not provided clear and convincing evidence that state protection was unavailable. The second part was an analysis of state protection, in the alternative, on the assumption that the s. 96 finding was incorrect. Again, the IRB found against the Applicants in part because of their failure to seek state protection.

[9] In argument before the Court, the Applicants placed considerable reliance on the erroneous nature of this alternative analysis of state protection.

III. ANALYSIS

[10] Both parties accept that the standard of review applicable to the issues in this case is reasonableness because it is largely a fact driven decision. The Court concurs with the standard of

review (see *Chaves v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 193, as read in conjunction with *Dunsmuir v. New Brunswick*, 2008 SCC 9).

[11] Notwithstanding the excellent argument of Applicants' counsel focused particularly on the second part of the state protection analysis, the difficulty with that position is that it was an alternative analysis.

[12] The alternative state protection analysis, based on s. 96 grounds which are grounded in domestic violence, is problematic. The critical areas of the Court's concern are the suggestion that the Applicants could have done more, both in China and in Canada, to engage state protection.

[13] In that regard the IRB's finding ignores the fact that the Applicants had less than 48 hours between the time of the incident, where the Applicant was physically threatened by her husband's family, and the time of the flight to Canada. The suggestion by the IRB that the Applicants should have engaged the Chinese consulate appears more theoretical than practical in terms of securing state protection.

[14] However, whatever the infirmities of that analysis may be, it was based on an alternative finding under s. 96. The principal finding under s. 96, that this was a case of extortion, not family violence, was a reasonable finding. While the extortion was perpetrated by the Applicant's in-laws, it was not the type of domestic violence which the documentary evidence canvasses nor is it the type commonly considered as such.

[15] Having identified the risk as one of extortion, the IRB's s. 97 findings were reasonable. The principal conclusion on state protection was that China had structures in place, in principle and in practice, to provide protection for this type of conduct and that the Applicants had failed to rebut the legal presumption. That conclusion was reasonably open to the IRB on the evidence.

[16] To the extent that the alternative state protection analysis is unsustainable, it is irrelevant. The principal conclusions were reasonable in these circumstances.

IV. CONCLUSION

[17] Therefore, this judicial review will be dismissed. There is no question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1723-10

STYLE OF CAUSE: MIN ZHANG
YI ZHONG

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 18, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** Phelan J.

DATED: December 3, 2010

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