

Federal Court



Cour fédérale

Date: 20111214

Docket: IMM-3600-11

Citation: 2011 FC 1478

Toronto, Ontario, December 14, 2011

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

**HUILING FENG
PEIYING CAO (a minor)
JUNJIN CAO (a minor)**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application concerns a negative decision of the Refugee Protection Division of the Immigration and Refugee Board (RPD), wherein the Applicants are found not to be Convention refugees and not persons in need of protection based on a negative credibility finding. The Principal Applicant (Applicant) is a Chinese citizen who lived in the rural district of the City of Guangzhou and fled to Canada with her children in 2009, claiming fear of persecution on the basis of her

husband's actions in exposing corruption and expropriation of the head of the Brigade in her village.

The Applicant's husband was a Brigade Committee member and is currently in hiding.

[2] In the decision the RPD made the following negative credibility finding:

The panel indicated the claimant had sufficient time having obtained this information to again amend her personal information form narrative and questioned why she had not done this. The claimant again replied, "the consultant did not tell me (to do it)". The claimant confirmed that she had been assisted by counsel in the completion of her personal information form and had testified at the hearing that the contents of her personal information form were complete, true and correct. Her personal information form narrative has omitted significant details, which speak to the central issues of the claimant's claim for refugee protection. It is reasonable to expect the claimant to have referred to these incidents by way of or at least a personal information form amendment at some point prior to declaring her personal information form to be "complete, true and correct."

The claimant has had sufficient time to make further amendments prior to her hearing. She testified to being aware as late as the week prior to her hearing that she did not have adequate information to support her claim for refugee protection and that her counsel recommended that she obtained further support. The numerous omissions in the personal information form narrative and inconsistencies in her testimony call the overall credibility of the claimant into question and damage her ability to act as a credible witness. The panel draws a negative inference to the credibility of the claimant and her action of attaching very little significance to accurately reporting essential aspects of her claim and her unreasonable explanation for significant omissions.

[Emphasis added]

(Decision, paras. 30 and 31)

[3] I agree with Counsel for the Applicant's argument that the Applicant's PIF was accurate as of the date of filing, and any additions to her evidence tendered thereafter were made in the normal course of her claim proceedings. Therefore, I find that there were no omissions in the Applicant's

PIF; thus, the negative credibility finding is based on a critical error of fact and constitutes a reviewable error.

ORDER

THIS COURT ORDERS that the Order presently under review is set aside and this matter is referred back to a differently constituted panel for redetermination.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3600-11

STYLE OF CAUSE: HUILING FENG, PEIYING CAO (A MINOR), JUNJIN CAO (A MINOR) V. THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 13, 2011

REASONS FOR ORDER AND ORDER: CAMPBELL J.

DATED: December 14, 2011

APPEARANCES:

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