

Federal Court



Cour fédérale

Date: 20150415

Docket: IMM-2527-14

Citation: 2015 FC 471

Toronto, Ontario, April 15, 2015

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

**XITANG ZHAO
(A.K.A. XI TANG ZHAO)
YUEQUN ZHAO
(A.K.A. YUE QUN ZHAO)
YONGHONG ZHAO
(A.K.A. YONG HONG ZHAO)
JIAWEN ZHAO
(A.K.A. JIA WEN ZHAO)**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

ORDER AND REASONS

(Delivered Orally from the Bench in Toronto, Ontario on April 14, 2015)

[1] The applicants are a husband (the Principal Applicant), his wife and their two children. They have applied for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated March 11, 2014 wherein the Board

determined that they are neither Convention refugees nor persons in need of protection (the Decision). The application is made pursuant to subsection 72 (1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the IRPA).

I. Background

[2] The applicants are a family from Guangdong province in China. On September 19, 2011, the local town government notified the Principal Applicant that his farm was being expropriated.

[3] In October 2011, the Principal Applicant and six others whose farms were being taken acted as representatives (the Representatives) of the 30 families affected by the expropriations. They delivered a letter summarizing their concerns about fair compensation (the Letter) to the district government. At that time a guard took the names of the Representatives.

[4] On December 12, 2011, the Principal Applicant and his wife, along with one hundred villagers, arrived at the district government office to discuss reasonable compensation. After waiting for about one hour, they grew impatient and started chanting slogans (the Protest). The Public Security Bureau (PSB) arrived and began to assault the protesters. The Principal Applicant and his wife escaped and went into hiding. The PSB went to the applicants' home to arrest the Principal Applicant and his wife, accusing them of leading the Protest. The PSB left a summons for the Principal Applicant and his wife and looked for them repeatedly at relatives' homes. The other six Representatives were all arrested, and were subsequently sentenced to three years in prison.

[5] After the Principal Applicant's children were suspended from school, he realized that his family would not be safe in China. He therefore made plans to leave including hiring a smuggler and securing US visas.

[6] On February 25, 2012, the applicants arrived in the US. Then they illegally entered Canada on March 3, 2012. On March 9, they filed their refugee claims. They explained their failure to claim in the US saying that they followed their smuggler's instructions which involved claiming in Canada.

II. The Decision

[7] The Board based its negative credibility finding on the following:

1. Given the Golden Shield Project, it was highly unlikely that the applicants would have been able to leave China using their own passports if they had actually been sought by the PSB.
2. If they had actually been sought by the PSB the applicants would not have approached the US visa office for fear of being arrested by the police guards at that location.
3. The PSB's violent response to the Protest was improbable given that authorities sometimes tolerate demonstrations.
4. It was unreasonable that the PSB summons would include the applicant's wife as she had not been one of the Representatives.

5. There was conflicting testimony between the Principal Applicant and the female applicant about who had written the Letter.
6. Other documents were not deserving of any weight because: i) Fraudulent documents are available in China; ii) The documents lacked security features; and iii) The Board had credibility concerns about the applicants' testimony.

[8] In light of the above, the Board concluded that the Principal Applicant had failed to establish that he had been a Representative of a group of villagers whose land had been expropriated or that he and his wife were fugitives from the PSB.

[9] On the issue of nexus, the Board found that even if the applicants were believed, the Principal Applicant would face prosecution and a fine under a law of general application for organizing an illegal public gathering. The Board also drew a negative inference regarding the applicants' subjective fear given their failure to make a claim for asylum in the United States.

III. Issues

[10] There are two issues:

1. Did the Board make unreasonable credibility findings?
2. Did the Board assess nexus reasonably?

IV. Discussion

A. *Issue I*

[11] The Board concluded that the evidence showed an inconsistency in that the Principal Applicant said that the Letter was written by a third party while his wife testified that she had written the Letter. A review of the transcript shows that the Board was mistaken. Both applicants said that a third party had been the author of the Letter.

[12] The Board also concluded that the applicants' failure to claim in the US showed a lack of subjective fear and the Board noted in this context that the applicants' passports had no US entry stamps. The inference was that the applicants might have spent significant time in the US and might not have used the services of a smuggler to come to Canada. However, the Board was again mistaken. There were US entry stamps in all the applicants' passports showing February 25, 2012 as their arrival date.

[13] In my view, these two errors coloured the entire Decision because the Letter was central to the claim and the existence of a smuggler explained the applicants' failure to claim in the US.

B. *Issue II*

[14] Having said that it would consider the issue of persecution vs. prosecution on the basis that the applicants were credible; the Board only looked at the possibility of a fine. It failed to consider the applicants' evidence that other Representatives were sentenced to three years in prison for their participation in the Protest.

[15] For all these reasons, the application will be allowed.

[16] No question was posed for certification for appeal pursuant to section 74(d) of the IRPA.

ORDER

THIS COURT ORDERS that the application for judicial review is granted, the Decision is set aside and the application for refugee status is to be reconsidered by a different panel of the Board.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2527-14

STYLE OF CAUSE: XITANG ZHAO, (A.K.A. XI TANG ZHAGO), YUEQUN ZHAO, (A.K.A. YUE QUN ZHAO), YONGHONG ZHAO, (A.K.A. YONG HONG ZHAO), JIAWEN ZHAO, (A.K.A. JIA WEN ZHAO) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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DATED: APRIL 15, 2015

APPEARANCES:

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